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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

THE PEOPLE, Plaintiff and Respondent, v. TANISHIA SAVANNAH WILLIAMS et al., Defendants and Appellants.	C081683 (Super. Ct. No. 14F2849)

In this sex trafficking case involving seven named victims, defendants Melvin Derell Baldwin-Green and Tanishia Savannah Williams were convicted by jury of four counts of human trafficking of a minor (Counts 1, 23, 31, and 35)[1], one count of abduction of a minor for purposes of prostitution (Count 4), three counts of pimping a

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[1] With respect to Baldwin-Green, the jury found two of the counts were committed by use of force, fear, deceit, coercion, violence, duress, menace, or threat of unlawful injury to another (Counts 1 and 31). With respect to Williams, the jury found one of the counts was committed by use of such means (Count 31). We refer to these crimes as aggravated human trafficking of a minor.

minor (Counts 5, 24, and 37), two counts of pandering a minor (Counts 25 and 36), one count of child abuse (Count 7), one count of human trafficking of an adult (Count 13), two counts of pimping (Counts 21 and 34), three counts of pandering (Counts 15, 22, and 33), one count of kidnapping (Count 14), one count of aggravated kidnapping (Count 38), and one count of false imprisonment by violence or menace (Count 18). Baldwin-Green was further convicted of additional counts of false imprisonment by violence or menace (Counts 9 and 30), human trafficking of an adult (Count 26), pimping (Counts 11 and 27), and pandering (Counts 12 and 28), as well as one count each of forcible rape (Count 29), statutory rape (Count 10), attempted statutory rape (Count 19), robbery (Count 20), posing a minor for commercial sex acts (Count 8), and making a criminal threat (Count 16).[2]

The trial court sentenced Baldwin-Green to serve an aggregate determinate term of 55 years in state prison consecutive to an aggregate indeterminate term of 37 years to life. Williams was sentenced to serve an aggregate determinate term of 30 years 8 months in state prison consecutive to an indeterminate term of 15 years to life.

Defendants raise a multitude of contentions on appeal, jointly with respect to some claims, individually with respect to others. Part I of the discussion portion of this opinion addresses a constitutional challenge to Penal Code[3] section 236.1, subdivision (c)(2). We conclude the statute is neither unconstitutionally vague nor unconstitutionally overbroad. We address several sufficiency of the evidence claims in parts II through VI and conclude Baldwin-Green's conviction for forcible rape in Count 29 must be reversed. Then, in

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[2] The jury acquitted both defendants of one count of kidnapping (Count 3) and could not reach a verdict with respect to one count of pandering a minor (Count 6). With respect to Count 9, Williams was convicted of the lesser included offense of false imprisonment.

[3] Undesignated statutory references are to the Penal Code.

parts VII through X, we address and reject four claims of error related to the jury instructions. Finally, several sentencing error claims will be addressed in parts XI through XV. We conclude with respect to these claims, as the Attorney General concedes, the sentences imposed on several counts must be stayed pursuant to section 654 and the sentence imposed on Count 6 must be stricken. We further conclude Baldwin-Green has forfeited his claim of cruel and/or unusual punishment, Williams's matter must be remanded to the trial court for the limited purpose of determining whether or not she had sufficient opportunity to put on evidence relevant to her eventual youth offender parole hearing, and finally, notwithstanding agreement among the parties, there is no clerical error to correct in Williams's abstract of judgment.

FACTS

As previously mentioned, this sex trafficking case involves seven named victims. However, because defendants' challenges to the sufficiency of the evidence are limited to counts involving four of them (C., G., S., and T.), we provide a detailed description of the crimes committed against these victims. While the remaining victims (Ad., Az., and K.) are no less important, we dispense with a detailed description of the crimes committed against them and provide a more condensed summary.

Crimes Committed Against C.

In November 2012, C. worked as a prostitute in Sacramento. She was 18 years old. Her pimp at the time, Kevin, had her walking a stretch of road in North Highlands referred to as "the blade." She would walk down Watt Avenue from one gas station to a different gas station a short distance away, turn down a side street, and then return to the first gas station via a back street running parallel to Watt Avenue, "catch[ing] more tricks" on the back street. Kevin rented a room at a nearby Motel 6 while C. worked.

In the middle of the month, Kevin introduced C. to Baldwin-Green, who went by the nickname, "Scooby." Baldwin-Green picked both up at the Motel 6 in his white

Lexus sedan and brought them to his apartment off of Edison Avenue in the Arden-Arcade area. Williams was also at the apartment. While Baldwin-Green and Kevin talked in the living room, Williams and C. got to know each other in the bedroom. Williams told C. she was dating Baldwin-Green. At some point during the visit, Kevin and C. went outside together and Kevin became verbally and physically abusive. C. was crying when she returned to Williams in the bedroom. Williams held her, saying, "everything is going to be okay" and "you shouldn't be with somebody like that." C. also met another girl at the apartment, Ad., who was working as a prostitute for Baldwin-Green. C. asked Williams whether she could also work for him. Williams said she would talk it over with Baldwin-Green. About two days later, C. ran away from Kevin and started working for Baldwin-Green.

Defendants posted an online advertisement for C.'s services using photographs of her wearing lingerie supplied by Baldwin-Green. Williams took the photographs. Calls for C.'s services came to Baldwin-Green's cell phone. He often took these calls, changing "his voice to a girl's voice" while speaking to the potential clients. After a "date" was arranged, either Williams or Baldwin-Green would tell C. what services to provide and how much to charge. Williams would then do C.'s hair and makeup and lay out an outfit. Sometimes the date would involve just her providing the services. Other times, she and Ad. would provide them together. Either way, C. was required to collect the money up front and hand it over to Williams or Baldwin-Green at the end of the date. Baldwin-Green would stay in the apartment during the dates, hiding in a closet or behind the couch, in order to protect the girls "if anything bad happens."

In addition to these "in-calls," defendants would also arrange "out-calls" for C., in which they would drive her to the client's location and wait for her in the car. During one of these out-calls, C. did not collect the money up front and the client refused to pay afterwards, saying: "You know I'm a pimp, right?" When C. returned to the car without the money, Baldwin-Green drove her back to the apartment and starting yelling about

how "stupid" and "dumb" she was. He then called the "trick-slash-pimp" on the phone, telling him, "if you want her, you can come get her." After hanging up the phone, he called C. a "stupid bitch." In response, C. said she was leaving. Baldwin-Green pulled out a handgun and pointed it at her, saying: "No, you're not going anywhere." C. was scared and started crying. This was the first time Baldwin-Green had become violent with her and the first time she had seen him with a gun.

Defendants brought C. up to Redding on three occasions between November 2012 and January 2013. Each time, they stayed at Baldwin-Green's mother's house for a few days. During the first trip, C. performed several out-calls. Williams and her sister, who also joined them for the trip, would get C. ready for the dates and drive her to the client's location. Sometimes, Baldwin-Green's mother would come along.

After this trip to Redding, back in Sacramento, C. was at a store with defendants when a friend of C.'s cousin started talking to her. This individual got into an argument with Baldwin-Green. They eventually took the argument outside to the parking lot, where Baldwin-Green got his gun out of the trunk of his car and threatened to start shooting. The cousin's friend walked away. Baldwin-Green then drove Williams and C. back to the apartment and drove off by himself. Later that night, he called Williams and said C.'s cousin had chased him on the freeway and shot at his car.

Baldwin-Green came back to the apartment the next morning and drove Williams and C. back to his mother's house in Redding. Apparently during the drive, C.'s cousin called Baldwin-Green. The conversation became heated. Baldwin-Green threatened to kill the cousin as well as "his sister, his son and whoever else that was in the way." C. started crying and asked to be taken home, but Baldwin-Green ignored her while Williams told C. her family did not care about her. When they got to the house in Redding, C. called her sister on the phone, but Baldwin-Green took her cell phone, saying, "he didn't want nobody to know where [she] was at." At some point, defendants drove C. back to the apartment in Sacramento. C. did not attempt to leave when they got

back because in the meantime defendants "would say stuff to make [her] not want to go home," specifically, that her family did not want her and that defendants were her family and the only ones who cared about her.

The third trip to Redding occurred in January 2013 and included both C. and Ad.[4] Both girls performed out-calls during the trip. When they returned to Sacramento, C. and Ad. decided to leave together. They waited until Baldwin-Green was not at the apartment and Williams was asleep. When Williams woke up as they were leaving, she asked where they were going. Ad. said they were going to her sister's house to babysit. Williams asked whether they asked Baldwin-Green. They said no. Williams then blocked their path to the front door and said she was going to call him. C. pushed Williams out of the way and ran out of the apartment. Ad. followed her out the door.

C. continued working as a prostitute in Sacramento after leaving defendants. About a month after leaving, she received a phone call from a man asking for a "car date," meaning she would provide the services in his car. The caller told her to meet him at a nearby gas station. When she arrived, the caller was in a Lexus that looked like Baldwin-Green's car except it had tinted windows and she did not remember his car having tinted windows. So she got inside. When the driver pulled out of the gas station and parked the car behind some nearby houses, Baldwin-Green opened the passenger side door and began hitting C. in the head. C. kicked him and tried to get away, but Baldwin-Green grabbed her by the leg, forced her into the back seat, and got in beside her, continuing to hit her in the head. Williams and another woman also got in the back seat.

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[4] Ad. was no longer working for defendants during the first two trips to Redding, but returned before the third trip. As we explain more fully later, Baldwin-Green told her to leave when he found out she was 16 years old, but allowed her to return a short time later.

At Baldwin-Green's direction, Williams held C.'s head down. Baldwin-Green then got in the front passenger seat and the car drove away. A short time later, the car stopped and Baldwin-Green paid the driver, who got out of the car and left.

Williams then took over the driving and Baldwin-Green returned to the back seat. He told C. she owed him $1,300 for damage done to his car when her cousin shot at him on the freeway. He said he was going to take her "to the woods" where he would "cut off all of [her] hair and . . . take all of [her] teeth out." He also threatened to find a cold mountain and "leave [her] there naked . . . to die." Baldwin-Green held C.'s head down and covered her face with a bandana while he threatened her, but she could feel a crescent wrench tightening around her fingers as he threatened to cut them off. C. was "crying and shaking" and told him she wanted to go home. He said she could not leave because she owed him money. C. understood this to mean she would be required to go back to work for him as a prostitute. After a long drive, Williams stopped the car at a motel in Red Bluff and paid for a room. Baldwin-Green escorted C. to that room holding her arm with one hand and a hammer with the other. Inside the room, he asked C. whether she "was going to make his money." C. said no and repeatedly asked to go home. After some yelling and arguing, including Williams telling C. to "just give him his money," Baldwin-Green said he would take her home the following morning.

The next morning, Williams tried to convince C. to pay Baldwin-Green back by working for them as a prostitute. She again refused and asked to go home. Baldwin-Green said he would take her home and they all got back in the car. After some driving around, at Baldwin-Green's direction, Williams stopped the car at a Walgreens and bought scissors. Back on the road, Baldwin-Green called someone on the phone and said he was going to leave C. in the mountains, adding, "why should I care if she dies out there, she didn't care about my safety." They ultimately pulled over in "the woods" north of Red Bluff. Baldwin-Green put on a ski mask and told Williams to use her cell phone to record a video. While she recorded, Baldwin-Green said, "this is what we do to

bitches that . . . didn't care that we was nice." He then cut off C.'s hair, forced her to take off her clothes, and left her on the side of the road naked.

C. walked down the road for awhile and eventually came upon a house that was separated from the main road by a long dirt driveway. Two of the house's occupants, a mother and her daughter, were home at the time. The daughter was the first to notice C. in front of the house, "trying to cover herself" with her arms and hands and looking "nervous and stressed." Alerted to C.'s presence, the mother opened the front door and said: "Oh, my goodness. What is going on? Are you all right?" C. said, "her ex-boyfriend had cut off all of her hair and that she didn't know where she was." As they spoke, defendant's car drove partway down the driveway and quickly turned around and left again. The mother brought C. inside and called 911 while her daughter gave C. some clothes to wear. A Tehama County Sheriff's deputy arrived a short time later. C. was taken to the hospital.

Later the same day, the mother called 911 again, this time to report a different white car was driving around the neighborhood. The same deputy returned and detained three people in a white Chevy Impala, i.e., Williams, and Baldwin-Green's mother and sister. Baldwin-Green apparently drove his white Lexus to a gas station outside Redding and left it there. The car was found by Shasta County Sheriff's deputies later that night and impounded. The ski mask, crescent wrench, and hammer described by C. were found in the vehicle. The car also had what appeared to be a bullet hole in the radiator.

Based on the foregoing events, defendants were convicted of one count of human trafficking (Count 13), one count of kidnapping (Count 14), two counts of pandering (Counts 15 and 22), one count of pimping (Count 21), one count of false imprisonment by violence or menace (Count 18), one count of second degree robbery (Count 20), and one count of aggravated kidnapping (Count 38). Baldwin-Green was also convicted of one count of making a criminal threat (Count 16).

Crimes Committed Against G.

G. met Baldwin-Green in June 2013. By this point, Baldwin-Green was living at an apartment on Cottage Way across from Howe Community Park in the Arden-Arcade area. G. was 17 years old and also lived in the area. She would periodically walk past Baldwin-Green on her way home from school. Baldwin-Green would be standing next to his car parked on the street and would flirt with G. as she walked past. After a number of these encounters, Baldwin-Green gave G. a business card that simply read, "Scooby" and had a phone number. During a subsequent encounter, he asked whether she had a job or was looking for one. G. said she was looking. Baldwin-Green "kind of shrugged" in response. During another encounter, he showed her "a big wad of cash" that he had in his pocket and told her he had a business that "makes a lot of money." He also pointed out which apartment he lived in and told her she could come over if she ever wanted to "just hang out or talk."

G. thought Baldwin-Green was probably a drug dealer, but also that he was "pretty nice, like friendly," and they could be friends. At some point, G. took him up on his invitation to come over. When she knocked on his door, another girl looked out the window but did not open the door. G. left. On a different day, she ran into Baldwin-Green again and he invited her inside. G. had gotten into a fight with her mother and did not want to return home, so she followed him into his apartment. Inside the apartment, G. met the girl who had previously looked out the window when she first knocked on Baldwin-Green's door. This girl, K., offered G. some marijuana. The two smoked together and became friends. G. also met Williams, whom Baldwin-Green introduced as his cousin.

G. stayed at the apartment for about a week and a half. About two days after she arrived, Baldwin-Green told G. she should think about working as a prostitute if she wanted to make money. G. was "shocked," but the way Baldwin-Green broached the subject indicated "it was no big deal." She said nothing in response. Later, K. brought

up the subject of prostitution in the apartment complex's pool. G. did not agree to become a prostitute during this conversation either. After the conversation, she and K. went back into the apartment and smoked marijuana. Despite the lack of agreement on G.'s part, Williams later told her "a guy was going to come" to the apartment and she "had to stay" while everyone else left. G. understood this to mean the man was coming there to have sex with her. Williams confirmed this when she said the man "knew the price" and told G. to collect the money first. Rather than protest, G. decided to try to leave after defendants left and before the client showed up.

The client arrived before G. could leave the apartment. K., who was also still in the apartment when he got there, told him to come in and then left as the man handed G. the money. G. offered to return the money rather than have sex with him, but he said he did not want his money back and she "had to give him what he paid for." The man then forced G. to have sex with him on the floor. Defendants and K. returned shortly after the man left. Baldwin-Green demanded the money G. was paid. G. initially looked at K., who told her to "give it to him." G. complied and handed over the money.

Williams scheduled one more in-call for G. at the apartment, but she refused to have sex with the client and did not receive any money. An out-call was also scheduled. Baldwin-Green drove her to the client's house and dropped her off, but G. refused to go through a gate leading to the house by herself and returned to the car saying, "it looked sketchy." Baldwin-Green said, "whatever" and drove her back to the apartment.

Defendants then decided to have G. and K. walk Watt Avenue together and perform car dates. Baldwin-Green warned G. to avoid "flashy" cars because other pimps would be out there. As G. explained his warning, "if a pimp saw me, then he would take me and abuse me and take everything that I have and practically leave me out for dead." Baldwin-Green also told G. that he would be watching her in case "a pimp tried to get [her] or something goes wrong." G. was too scared to try to run away. Over the span of a few days, G. performed several car dates and gave the money she made to Baldwin-

Green, who was parked at a nearby Kentucky Fried Chicken. After one of the car dates, G. tried to keep some of the money for herself. Williams caught her with the money in her bra and told her to give it to Baldwin-Green "before he finds out." Her voice was "stern" and "cold" when she issued this directive. Nevertheless, G. continued to keep some of the money she made, explaining: "I feel like I'm being used, so whatever I'm doing, then I'm going to keep it. I'm going to keep half regardless, because I was going to leave."

About a week and a half after G. started working for defendants, she and K. decided to leave together, along with another girl who arrived at the apartment a day or two before. They waited until defendants left the apartment and ran to a nearby Starbucks together. The other girl, whom everyone called "the Kid," secured a ride to South Sacramento for the three of them.

In the meantime, G.'s mother was trying to find her daughter. G. had run away before, but always returned in a few days. Her mother found a phone number for "Scooby" in G.'s backpack and called the number. A female answered the phone. After speaking to this female, G.'s mother unsuccessfully searched for her daughter at an apartment complex. She called the number again and eventually spoke to Baldwin-Green, who connected her, by way of a three-way call, to another female who was apparently with G. in South Sacramento. After several hang ups, this female agreed to drop G. off at a gas station near the Arden Fair Mall. Baldwin-Green offered to meet G.'s mother at the gas station "to make sure everything [was] fine." She agreed. G. was dropped off at the gas station as arranged. Baldwin-Green also came to the gas station, but stayed in his car. When G. met her mother at the gas station, she saw Baldwin-Green's car and became agitated. Police also arrived a short time later and arrested G. on a juvenile warrant.

G. was later interviewed by an investigator. G. stated during the interview that she told Baldwin-Green she was not going to work as a prostitute, to which he responded, "she did not have a choice" and "told her that he would hurt her mom if she refused."

Based on the foregoing events, defendants were convicted of one count of aggravated human trafficking of a minor (Count 31), one count of pandering a minor (Count 33), and one count of pimping a minor (Count 34).

Crimes Committed Against S.

S. met Baldwin-Green in December 2013. She was 18 years old and working as a prostitute in Vacaville. Baldwin-Green got her cell phone number from an online advertisement she had put up for herself. He sent her a text message with a picture of "stacks of money" attached. The text message told her she needed to choose a pimp and offered himself as that pimp. S. agreed to meet Baldwin-Green on Watt Avenue. He told her he would be arriving in a white sedan, but pulled up in a dark green car. S. got in the car and agreed to work for him. As she explained: "I had nowhere else to go. At the time, I was going from house to house homeless and [working for Baldwin-Green] was basically stable, safe shelter." Baldwin-Green then picked up Williams and the three drove to a one-bedroom apartment in Redding.

At the apartment, Baldwin-Green took photographs of S. in lingerie he provided, placed an online advertisement for her services, and also booked the dates. As S. described, he "sounded like a girl" when he talked to potential clients on the phone, adding, "he played it off smooth so they were thinking they were really talking to a female." S. performed several in-calls in the living room of the apartment during the month of December. She slept in the bedroom with Baldwin-Green. Williams would periodically stay the night at the apartment and slept on a futon. The second night S. was at the apartment, Baldwin-Green showed her he had a gun and some knives. While S. never attempted to leave the apartment, at least not until she successfully did so on December 31, she testified the doorknob on the bedroom door was "switched inside out"

such that Baldwin-Green was able to lock it from the outside. On three or four occasions, he locked her in the bedroom. On two occasions, S. told Baldwin-Green she wanted to go back to Sacramento. He refused and said she "wasn't making enough money." S. had access to a cell phone while she was at the apartment and used it periodically to call her mother, but testified she did not tell her what was going on because she believed her mother would have told her to "find a way home."

Baldwin-Green and S. had sex twice while she was at the apartment. The first night she was at the apartment, Baldwin-Green came into the bedroom and told her she would not be going home unless she had sex with him. S. did not want to do so, but complied without objection because she thought she "had to" in order to "make a little money and leave." They had sex again a couple days later. Baldwin-Green did not say anything beforehand. S. did not want to have sex with him this time either. When asked why she had sex with him again, S. testified: "Just did."

As mentioned, S. left the apartment on December 31. She was in the bathroom talking to her mother on the phone when defendants came in the bathroom and started arguing with her, apparently about the fact she was on the phone. Baldwin-Green took the cell phone and threw it on the floor, breaking it. The argument moved to the living room. Baldwin-Green told Williams to hit S. Instead, Williams grabbed S. and held her "between her arms" while Baldwin-Green called his mother, who showed up a short time later with two other people. When S. demanded to leave, Baldwin-Green's mother told her son: "Let her go." After some discussion between Baldwin-Green and his mother, someone opened the front door and S. walked out of the apartment.

S. ran across the street to a woman who was in her driveway putting her children in her car to go grocery shopping. S. was "screaming to call 911." The woman described S.'s demeanor as "really upset," adding: "She was crying. Her make-up was all over her face. Her hair was messed up. She was putting -- her shoes were under her arm." The woman called 911. During the call, Williams also came across the street and "was trying

to convince [S.] that everything was fine and to come back with them." S. responded: "Get the fuck away from me." Williams returned to Baldwin-Green and the others, who were watching from across the street. Everyone got into a Chevy Impala and drove away. After some time waiting for law enforcement officers to arrive, the woman who made the 911 call drove S. to the police station herself.

Based on the foregoing events, Baldwin-Green was convicted of one count of human trafficking (Count 26), one count of pimping (Count 27), one count of pandering (Count 28), one count of forcible rape (Count 29), and one count of false imprisonment by violence or menace (Count 30).

Crimes Committed Against T.

T. was 16 years old and living in Sacramento when she met Baldwin-Green. They met through an online dating Website sometime toward the end of 2013. T. told Baldwin-Green her age, either while communicating through the Website or after exchanging phone numbers and communicating through text messages. They met in person two or three weeks later. As T. explained, based on their text message interactions, "he seemed like a really nice person and very peaceful to be around." When they met in person, Baldwin-Green also brought Williams. This first encounter involved sitting in Baldwin-Green's car and "getting to know each other a little better." On another occasion, they arranged to meet at a party. Williams was there as well. The third in-person encounter involved defendants picking T. up at her house and driving her to Redding, to the same apartment S. stayed at, although apparently before S. arrived.[5] T.

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[5] As we explain shortly, it was not until T.'s third trip to Redding that she began engaging in prostitution. As previously mentioned, S. was at the apartment in December 2013. She remembered T. being there and engaging in prostitution, testifying that T. was brought to the apartment by Baldwin-Green sometime after S. got there. From this, we may reasonably conclude S. was there only for T.'s third trip to Redding, which must have happened sometime in December 2013 since that was when S. was staying at the apartment.

stayed at the apartment for three days, sleeping in the living room. She kept to herself for the most part because Baldwin-Green's "presence and the way he was talking and moving around a whole lot made [her] feel uneasy." After three days, Baldwin-Green drove T. home.

Back in Sacramento, Baldwin-Green continued communicating with T., mainly through text messaging. T. told him she felt uneasy about being in Redding with him. He promised "next time it wouldn't be that way." T. decided to give him another chance. At some point, Baldwin-Green and Williams picked her up and drove her back to the same apartment in Redding. This time, T. stayed for only two days. When she told Baldwin-Green she wanted to go home, he became "angry and furious" and gave Williams money to buy her a bus ticket back to Sacramento. When T. got back to Sacramento the second time, she considered deleting Baldwin-Green's number from her phone, but decided to give him a final chance and resumed communication. After they talked some more, T. felt like she knew him "a little better" and agreed to make a third trip to Redding with him. Defendants again picked her up and drove her to the same apartment.

Defendants brought up the subject of prostitution after they got to the apartment. When T. said she was not comfortable doing that, Baldwin-Green "got mad and started cussing." T. again said she wanted to go home. Baldwin-Green responded, "[I] don't give a fuck," and told T. she "will be prostituting" and "would be staying out there for as long as he wants." T. then started "screaming and cussing" and tried to leave the apartment, but Baldwin-Green pulled her back inside and the two yelled at each other in the apartment, "screaming and cussing back and forth." Baldwin-Green told her, "you can try to leave all you want, but you will not get far out there" and "this is my city." T. tried to leave again, but he blocked her path to the door. After that, she "just gave up." Baldwin-Green brought up prostitution again after they had calmed down. T. repeated she would not be doing that. Baldwin-Green responded: "[T]hat is the only way you're

going to get back home." He also showed her a video on his cell phone of "a girl getting beat up by a dude and everybody was just sitting there laughing, like it was all fun and games." T. recognized Baldwin-Green in the video, and, while she did not say whether he was the one delivering the blows, she understood the video to depict "what he did to girls before" and described it as "very terrifying." After watching the video, T. "gave in" and "went into prostitution."

Similar to his previous victims, Baldwin-Green took photographs of T. in lingerie, used them to place an online advertisement for her services, and also booked the dates, "disguis[ing] his voice as a girl" while talking to potential clients. Also like S., T. performed in-calls in the living room of the apartment, collecting the money up front and handing it to Baldwin-Green after the date. Some of the sex acts were performed with another girl, possibly S. T. also had sex with Baldwin-Green twice at the apartment. She was still 16 years old.

According to T., Williams's role was "just helping [Baldwin-Green] out with all he needed," such as buying condoms and lubrication and picking up food. Williams was "friendly" to T. while she was at the apartment and at some point T. asked Williams to help her leave. Williams said that was not "in her hands" and it was instead "all up to [Baldwin-Green]." T. also tried to escape out of the bathroom window, but the window was too small. She did not try to leave through the front door because, as T. explained, Baldwin-Green "always had [Williams] there with me to make sure I don't go outside." And while defendants and T. periodically went out in public together, T. did not try to run away or call out for help because she was afraid Baldwin-Green would "do something stupid." When asked what she meant by "something stupid," T. answered: "He'll yell and actually hit me one time when he got mad because I didn't want to do a date." T. further testified Baldwin-Green bragged "that he got guns and that he know how to use them," which "scared the living hell out of [her]."

Defendants moved T. to a different apartment in Redding sometime after S. left. She continued to perform in-calls at this apartment. Baldwin-Green and T. also had sex a third time while staying there. When asked why she did not try to escape from this apartment, T. explained Baldwin-Green "had every door bolted and locked and he flipped the locks" so they could be locked from the outside. The windows also had "little bolts" preventing them from opening. T. saw Baldwin-Green installing these bolt locks. She tried to unscrew them at some point, but they were "too hard to unscrew."

T. escaped from the apartment in April 2014. Baldwin-Green "got mad" about something and "stormed out" of the apartment, forgetting to take her cell phone with him. Apparently, Williams was not at the apartment at this time. T. took this as her opportunity to leave. As she described: "I called my sister and I told her what happened and what he did to me and asked her to call 911. And that's when I called 911 and that's when I got my stuff and went out the house. And she told me go to the nearest neighbor to help you. You know, the next door neighbor, he was deaf so he couldn't help me so I ran to the next person that was able to help." That person was leaving her house to help her niece move into a different house down the street. T. ran up to the woman and asked to hide in her house. The woman described T.'s demeanor as "anxious, upset," with "tears in her eyes." Nevertheless, the woman declined to bring T. inside her house. Instead, she told T. to "go hide somewhere" and she would "get back to [her]" after helping her niece. She then walked to her niece's new house and told her what happened. The niece responded: "Auntie, you cannot leave that girl down there." The woman then went back outside and motioned for T. to come to the niece's house. T. quickly walked over to the house and went inside, where she told the niece what had happened. Officers with the Redding Police Department arrived a short time later.

Based on the foregoing events, defendants were convicted of one count of aggravated human trafficking of a minor (Count 1), one count of abduction of a minor for purposes of prostitution (Count 4), one count of pimping a minor (Count 5), and one

count of child abuse (Count 7). Baldwin-Green was additionally convicted of one count of posing or modeling a minor for commercial sex acts (Count 8), one count of false imprisonment by violence or menace (Count 9), one count of statutory rape (Count 10), and one count of attempted statutory rape (Count 19). With respect to Count 9, Williams was convicted of the lesser included offense of false imprisonment.

The Remaining Victims (Ad., Az., and K.)

As previously mentioned, Ad. worked as a prostitute for defendants during roughly the same time period as C. She met Baldwin-Green while working a stretch of road known for prostitution in the South Sacramento area, Stockton Boulevard. She was 16 years old when she started working for defendants. At some point they discovered she was a minor and told her she had to leave. A short time later, however, they allowed her to come back to work for them so long as she interacted primarily with Williams and gave her the money she made. Defendants also brought her to Redding with C. on one occasion to perform out-calls while she was still a minor. Based on their conduct involving Ad., defendants were convicted of one count of human trafficking of a minor (Count 23), one count of pimping a minor (Count 24), and one count of pandering a minor (Count 25).

As also mentioned, K. worked as a prostitute for defendants during roughly the same time period as G. She met Baldwin-Green at a gas station on Watt Avenue. She was 16 years old and worked for defendants for two or three months, performing about 15 in-calls a week. During this time period, she also performed one out-call and several car dates. Based on their conduct involving K., defendants were convicted of one count of human trafficking of a minor (Count 35), one count of pandering a minor (Count 36), and one count of pimping a minor (Count 37).

Finally, Az. was working as a prostitute in Sacramento when she met Baldwin-Green in May 2014, after the events involving T. He contacted her through an online advertisement she had put up for herself and told her she could make more money

working for him in Redding. Az. agreed and spent about a week at a house in Redding with Baldwin-Green and Williams. Az. performed four or five in-calls and one out-call. A second out-call was scheduled, but the purported client was an officer with the Redding Police Department, who booked the out-call as part of a sting operation conducted following T.'s escape, described above. Based on his conduct involving Az., Baldwin-Green was convicted of one count of pimping (Count 11) and one count of pandering (Count 12).

DISCUSSION

In part I, we address a constitutional challenge to section 236.1, subdivision (c)(2), asserted by Baldwin-Green. We address several sufficiency of the evidence claims in parts II through VI, beginning with three raised by both defendants, followed by two raised by Baldwin-Green. In doing so, we also address an assertion made by Williams regarding lesser-included offenses. Then, in parts VII through X, we turn to claims of error related to the jury instructions, one instructional error claim raised by both defendants, two such claims raised by Baldwin-Green, and an additional instruction-related claim raised by Baldwin-Green. Finally, we address several sentencing error claims in parts XI through XV.

CONSTITUTIONAL CHALLENGE

I

Vagueness and Overbreadth

Baldwin-Green contends his convictions for aggravated human trafficking of a minor (Counts 1 and 31) must be reversed because section 236.1, subdivision (c)(2), is unconstitutionally vague and overbroad, both on its face and as applied. We disagree.

Section 236.1, subdivision (c), provides: "A person who causes, induces, or persuades, or attempts to cause, induce, or persuade, a person who is a minor at the time of commission of the offense to engage in a commercial sex act, with the intent to effect or maintain a violation of Section 266, 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4,

311.5, 311.6, or 518 is guilty of human trafficking. A violation of this subdivision is punishable by imprisonment in the state prison as follows: [¶] (1) Five, 8, or 12 years and a fine of not more than five hundred thousand dollars ($500,000). [¶] (2) Fifteen years to life and a fine of not more than five hundred thousand dollars ($500,000) *when the offense involves* force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person." (Italics added.)

Counts 1 and 31, involving T. and G. respectively, charged Baldwin-Green with the aggravated form of this crime. With respect to these counts, the jury was instructed the prosecution was required to prove he caused, induced, or persuaded, or attempted to cause, induce, or persuade these minor victims to engage in a commercial sex act while he possessed the specific intent to commit or maintain a violation of either section 266h (pimping) or section 266i (pandering). The jury was further instructed the prosecution was required to prove "the additional allegation that when the defendant committed those crimes, he/she used force, fear, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the other person or to someone else." The statutory terms, "duress," "menace," and "coercion," were then defined for the jury.

A.

Facial Challenge

Baldwin-Green argues section 236.1, subdivision (c)(2), is unconstitutionally vague and overbroad on its face because it requires only that the human trafficking offense "involve" one of the aggravating circumstances. He asserts that because such a circumstance "raises the offense level from a determinate term of five, eight, or twelve years to an indeterminate term of fifteen years to life[,] . . . fundamental due process requires that there be a certain test of causality and knowledge and intent which is stated in the statute and communicated to the jury and supported by substantial evidence." In other words, according to Baldwin-Green, in order to satisfy due process, one of the aggravating circumstances must have "caused the human trafficking to occur," and the

defendant must have known and intended that to be the case. Clarifying his position in the reply brief, Baldwin-Green argues the statutory term, "involves" is both "too vague to provide guidance for the imposition of criminal penalties" and too broad because it allows "conviction for aggravated human trafficking merely because the offense 'involves' force, duress, etc." without a showing that such an aggravating circumstance "caused the victims to acquiesce in human trafficking."

We begin with the statutory language. Section 236.1, subdivision (c), makes it a crime to cause, induce, or persuade, or attempt to cause, induce or persuade, a minor to engage in a commercial sex act, with the specific intent to effect or maintain a violation of several listed offenses, including pimping and pandering. If "the offense," i.e., the defendant's act of causing, inducing, or persuading, or attempting to cause, induce, or persuade, a minor to engage in a commercial sex act with the requisite specific intent, "involves force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person," the aggravated form of the crime has been committed and the offense is punishable by a term of 15 years to life in prison. (§ 236.1, subd. (c)(2).) Thus, the statute requires the defendant's commission of the offense to "involve" one of the aggravating circumstances.

The dictionary definition of "involve" includes, "to engage as a participant," "to oblige to take part," "to have within or as a part of itself," and "to require as a necessary accompaniment." (Merriam-Webster's Collegiate Dict. (11th ed. 2006) p. 660, col. 1.) The first two of these definitions deal literally with involving a person or entity in an endeavor, such as workers engaged as participants in the building of a house or Congress obliging the nation to go to war. (*Ibid*.) The second two, however, are apt definitions for our purposes. Where a defendant's commission of the offense of human trafficking of a minor either includes as a part of the crime, or entails as a necessary accompaniment thereto, the use of force, fear, fraud, deceit, coercion, violence, duress, menace, or threat

of unlawful injury to the victim or to another person, the result is the aggravated form of the crime.

With this proper reading of the statute in mind, we turn to Baldwin-Green's claims of vagueness and overbreadth.

1. *Vagueness*

"To withstand a facial vagueness challenge, a penal statute must satisfy two basic requirements. First, the statute must be definite enough to provide adequate notice of the conduct proscribed. [Citation.] Ordinary people of common intelligence have to be able to understand what is prohibited by the statute and what may be done without violating its provisions. [Citation.] [¶] Second, the statute must provide sufficiently definite guidelines. A vague law impermissibly delegates basic policy matters to the police, judges and juries for resolution on a subjective basis, with the attendant risk of arbitrary and discriminatory enforcement. [Citation.] [¶] However, only a reasonable degree of certainty is required. The fact that a term is somewhat imprecise does not itself offend due process. Rather, so long as the language sufficiently warns of the proscribed conduct when measured by common understanding and experience, the statute is not unconstitutionally vague. [Citation.]" (*People v. Ellison* (1998) 68 Cal.App.4th 203, 207-208.)

We conclude section 236.1, subdivision (c)(2), satisfies this reasonable certainty test. Indeed, Baldwin-Green does not dispute that an ordinary person of average intelligence would understand what it means to cause, induce, persuade, or attempt to cause, induce, or persuade, a minor to engage in a commercial sex act while possessing the specific intent to violate certain enumerated provisions, including those prohibiting the crimes of pimping and pandering. He does dispute that such a person would understand what it means for the crime to "involve" one of the aggravating conditions. However, as we have explained, this simply means the defendant's commission of the human trafficking crime included as a part of that crime, or necessarily entailed as an

accompaniment thereto, the use of force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person. For example, where a defendant attempts to persuade a minor to work for him or her as a prostitute with the intent to pimp or pander that minor, he or she has committed the crime of human trafficking of a minor. Where he or she uses force or fear or another of the aggravating tactics in his or her attempt to persuade, or that attempt at persuasion necessarily entails such force, fear, etc., he or she has committed the aggravated form of the crime. Nor does the statute provide insufficiently definite guidelines so as to impermissibly delegate basic policy matters to the police, judges and juries for resolution on a subjective basis.

Nevertheless, in asserting his facial vagueness challenge, Baldwin-Green relies primarily on *Johnson v. United States* (2015) ___ U.S. ___ [135 S.Ct. 2551, 192 L.Ed.2d 569] (*Johnson*).) There, the United States Supreme Court determined a portion of the Armed Career Criminal Act of 1984 (the Act) was unconstitutionally vague. Under the Act, a defendant convicted of being a felon in possession of a firearm is subject to a more severe punishment if he or she has three or more prior violent felony convictions. The term, " 'violent felony' " was defined to include " 'burglary, arson, or extortion,' " or any felony that " 'involves the use or explosives, *or otherwise involves conduct that presents a serious potential risk of physical injury to another*.' " (*Id*. at pp. 2555-2556.) In determining whether or not an offense is a violent felony under this provision's residual clause (i.e., the italicized portion above), the court had previously held a categorical approach must be used. Under that approach, "a court assesses whether a crime qualifies as a violent felony 'in terms of how the law defines the offense and not in terms of how an individual offender might have committed it on a particular occasion.' [Citation.]" (*Id*. at p. 2557.) This approach "requires a court to picture the kind of conduct that the crime involves in 'the ordinary case,' and to judge whether that abstraction presents a serious potential risk of physical injury." (*Ibid*.)

The court held the residual clause was unconstitutionally vague for two reasons. First, the residual clause "ties the judicial assessment of risk to a judicially imagined 'ordinary case' of a crime, not to real-world facts or statutory elements," without any guidance as to how one should "go about deciding what kind of conduct the 'ordinary case' of a crime involves." (*Johnson, supra,* 135 S.Ct. at p. 2557.) Second, "the residual clause leaves uncertainty about how much risk it takes for a crime to qualify as a violent felony." (*Id*. at p. 2558.) The court explained: "It is one thing to apply an imprecise 'serious potential risk' standard to real-world facts; it is quite another to apply it to a judge-imagined abstraction. By asking whether the crime '*otherwise* involves conduct that presents a serious potential risk,' moreover, the residual clause forces courts to interpret 'serious potential risk' in light of the four enumerated crimes—burglary, arson, extortion, and crimes involving the use of explosives. These offenses are 'far from clear in respect to the degree of risk each poses.' [Citation.] Does the ordinary burglar invade an occupied home by night or an unoccupied home by day?" (*Ibid*.) The court concluded: "By combining indeterminacy about how to measure the risk posed by a crime with indeterminacy about how much risk it takes for the crime to qualify as a violent felony, the residual clause produces more unpredictability and arbitrariness than the Due Process Clause tolerates." (*Ibid*.)

The only similarity between this case and *Johnson, supra,* ___ U.S. ___ [135 S.Ct. 2551, 192 L.Ed.2d 569] is the residual clause at issue there and section 236.1, subdivision (c)(2), at issue here both include the word "involves." But it was not the use of that word that rendered the residual clause unconstitutionally vague. Instead, it was the fact that the residual clause required an assessment of the ordinary case of whatever crime was at issue, *not the actual commission of that crime,* and a comparison of the amount of risk presented by that imagined ordinary case with the amount of risk presented by an imagined ordinary case of burglary, arson, extortion, or other crime involving the use of explosives, in order to determine whether or not the ordinary case of the crime at issue,

again not the actual commission of that crime, involves conduct that presents a serious potential risk of physical injury to another. Here, by contrast, the crime of human trafficking of a minor is aggravated where the defendant uses force or fear or another of the aggravating tactics in order to cause, induce, persuade, or attempt to cause, induce, or persuade, a minor to engage in a commercial sex act with the requisite specific intent, or where his or her commission of the offense necessarily entails the use of such force, fear, etc. Thus, whether or not the crime "involves" one of the aggravating circumstances is determined by the "real-world facts" of the particular defendant's commission of the offense in a particular case. *Johnson, supra,* ___ U.S. ___ [135 S.Ct. 2551, 192 L.Ed.2d 569] is manifestly inapposite.

2. *Overbreadth*

Baldwin-Green's overbreadth challenge is premised on the notion that causation and the existence of a criminal intent is generally required in order to be convicted of a crime. (See *People v. Moncada* (2012) 210 Cal.App.4th 1124, 1132 ["the defendant's acts must be the legally responsible cause of the injury, death, or other harm constituting the crime"]; *People v. Vogel* (1956) 46 Cal.2d 798, 801 ["union of act and wrongful intent . . . is an invariable element of every crime unless excluded expressly or by necessary implication"]; see also *United States v. United States Gypsum Co.* (1978) 438 U.S. 422, 436-437 [57 L.Ed.2d 854].)

Section 236.1, subdivision (c), requires the defendant to have caused, induced, or persuaded, or attempted to cause, induce, or persuade, a minor to engage in a commercial sex act. Thus, the statute covers both the successful causing of the harm sought to be prevented and the unsuccessful attempt to cause such harm. As Witkin and Epstein point out with respect to an analogously structured statute (§ 136.1): "A person attempting any of the prohibited acts is guilty of the offense attempted without regard to the success or failure of the attempt." (2 Witkin & Epstein, Cal. Criminal Law (4th ed. 2012) Crimes Against Governmental Authority, § 6, p. 1425.) With respect to the intent requirement,

the crime is a specific intent offense, requiring the specific intent to effect or maintain a violation of several listed offenses, including pimping and pandering. (§ 236.1, subd. (c).)

Baldwin-Green does not appear to assert the foregoing definition of the crime unconstitutionally dispenses with either causation or intent. Instead, he argues the circumstance aggravating the crime must itself have caused the minor to engage in a commercial sex act, and further the defendant must have specifically intended that aggravating circumstance to cause the minor to do so. He cites no authority remotely supporting these assertions. Moreover, as we have explained, the mere attempt to cause, induce, or persuade a minor to engage in a commercial sex act with the requisite specific intent suffices to constitute the offense without regard to the success or failure of the attempt. This is so regardless of whether the non-aggravated or aggravated form of the crime is committed. What distinguishes the latter from the former is the use of force or fear or another of the aggravating tactics, or otherwise committing the crime in a manner that necessarily entails the use of such force, fear, etc. Baldwin-Green would have this court insert additional causation and intent requirements onto the aggravated form of the crime. We have uncovered no authority interpreting the Due Process Clause in such a way as would require us to do so.

B.

As-applied Challenge

Baldwin-Green further asserts section 236.1, subdivision (c)(2), is unconstitutional as applied in this case because, while the amended information read to the jury alleged Counts 1 and 31 were "committed by force, fear, [etc.]," and the jury was further instructed the prosecution was required to prove "the additional allegation that when the defendant committed those crimes, he/she used force, fear, [etc.]," these statements do not require one of the aggravating circumstances to have "caused the human trafficking to occur," as he claims is required to render the statute constitutional. We have already

rejected Baldwin-Green's assertion that the Due Process Clause requires us to insert this additional causation requirement onto section 236.1, subdivision (c)(2). We must therefore reject his as-applied challenge as well.

Section 236.1, subdivision (c)(2), is not unconstitutionally vague or overbroad, either on its face or as applied in this case.

SUFFICIENCY OF THE EVIDENCE

II

Aggravated Human Trafficking of a Minor (Count 31)

Both defendants claim their convictions for aggravated human trafficking of G. must be reversed for lack of sufficient substantial evidence to support the existence of one of the aggravating circumstances set forth in the statute. They are mistaken.

" 'To determine the sufficiency of the evidence to support a conviction, an appellate court reviews the entire record in the light most favorable to the prosecution to determine whether it contains evidence that is reasonable, credible, and of solid value, from which a rational trier of fact could find the defendant guilty beyond a reasonable doubt.' [Citations.]" (*People v. Wallace* (2008) 44 Cal.4th 1032, 1077; *Jackson v. Virginia* (1979) 443 U.S. 307, 317-320 [61 L.Ed.2d 560, 572-574].) "In deciding the sufficiency of the evidence, a reviewing court resolves neither credibility issues nor evidentiary conflicts. [Citation.] Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact. [Citation.] Moreover, unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction. [Citation.]" (*People v. Young* (2005) 34 Cal.4th 1149, 1181.)

As we explained in part I of this opinion, in order to convict defendants of human trafficking of a minor, as alleged in Count 31, the prosecution was required to prove: (1) they caused, induced, or persuaded, or attempted to cause, induce, or persuade G. to engage in a commercial sex act; (2) G. was a minor at the time; and (3) defendants

possessed the specific intent to effect or maintain a violation of either section 266h or 266i, i.e., pimping or pandering. (See § 236.1, subd. (c).) Defendants do not challenge the sufficiency of the evidence to prove these elements. Rather, they claim the evidence is insufficient to support the existence of one of the aggravating circumstances set forth in subdivision (c)(2), i.e., "force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person." (§ 236.1, subd. (c)(2).)

G. testified she never agreed to work as a prostitute for defendants, but they scheduled a date for her anyway. She was informed of this fact when Williams told her a man was coming to the apartment, she "had to stay" there while everyone else left, the man "knew the price," and to collect the money before having sex with him. Rather than protest, G. decided to try to leave after defendants left and before the client showed up, but the client arrived too soon. When she refused to have sex with the man, he raped her on the floor. G. then refused another in-call and an out-call, resulting in defendants having her perform car dates with K. on Watt Avenue. Baldwin-Green watched them from a nearby parking lot. While G.'s testimony did not include any threats made by Baldwin-Green, in an interview with an investigator, G. said she told Baldwin-Green she was not going to work as a prostitute, to which he responded, "she did not have a choice" and "told her that he would hurt her mom if she refused." Because G. claimed during her testimony that she did not remember Baldwin-Green threatening her mother, this prior inconsistent statement to the investigator was admitted for the truth of the matter asserted, i.e., that Baldwin-Green had in fact threatened to harm G.'s mother if she refused to work for him as a prostitute. (See Evid. Code, § 1235; see also *People v. Thomas* (2017) 15 Cal.App.5th 1063, 1076 [victim's testimony she did not recall certain acts "was inconsistent 'in effect' " with her earlier statement to a detective].) From this, the jury could reasonably have concluded Baldwin-Green made a "threat of unlawful injury to . . . another person" in order to induce G. to engage in commercial sex acts within the meaning of section 236.1, subdivision (c)(2).

With respect to Williams, the prosecution specifically relied on her "stern" and "cold" directive to G. to give Baldwin-Green the money she was withholding from him following several car dates. The prosecutor characterized this as "an implied threat" during closing argument. Williams argues this conduct does not amount to "menace" as that term has been defined in the case law. We need not decide the matter, however, because we conclude there is more than enough evidence to support her conviction based on the theory she knowingly and intentionally aided and abetted Baldwin-Green's commission of aggravated human trafficking of a minor.

"A person aids and abets the commission of a crime when he or she, (i) with knowledge of the unlawful purpose of the perpetrator, (ii) and with the intent or purpose of committing, facilitating or encouraging commission of the crime, (iii) by act or advice, aids, promotes, encourages or instigates the commission of the crime." (*People v. Cooper* (1991) 53 Cal.3d 1158, 1164.) The prosecution relied on aiding and abetting principles to support most of the counts charged against Williams. As the prosecutor stated in closing, "in most instances, [Williams] is aiding and abetting." The jury was also instructed on these principles.

Based on all the evidence, the jury reasonably could have concluded Williams knew Baldwin-Green intended to persuade G., a minor, to engage in commercial sex acts with the specific intent to pimp or pander her, and intending to facilitate the commission of the crime, she aided Baldwin-Green in doing so. And even if we were to accept that she did not initially intend for Baldwin-Green to commit the aggravated form of the offense, she continued providing assistance after he threatened to harm G.'s mother. At that point, Baldwin-Green was committing aggravated human trafficking of a minor and Williams was aiding and abetting its commission. (See *People v. Cooper*, *supra*, 53 Cal.3d at p. 1164 [aider and abettor may form intent to render aid during the commission of the crime].)

Defendants' convictions in Count 31 for violating section 236.1, subdivision (c)(2), are supported by sufficient substantial evidence of their guilt.

III

Abduction of a Minor for Purposes of Prostitution (Count 4)

Both defendants also contend their convictions for abduction of T. for purposes of prostitution must be reversed for lack of sufficient substantial evidence T. was taken from someone having legal charge of her. Not so.

Section 267 provides: "Every person who takes away any other person under the age of 18 years from the father, mother, guardian, or other person having the legal charge of the other person, without their consent, for the purpose of prostitution, is punishable by imprisonment in the state prison, and a fine not exceeding two thousand dollars ($2,000)." As our Supreme Court stated many years ago: " 'The gist of the offense is the taking away of the child against the will of the person having lawful charge of [the child], for the purpose of prostitution . . . .' [Citation.]" (*People v. Dolan* (1892) 96 Cal. 315, 318.)

Relying on *People v. Flores* (1911) 160 Cal. 766 (*Flores*), defendants argue the evidence is insufficient to establish "the existence of a substantive parent-child relationship" between T. and her parents. This misconstrues what *Flores* requires to support a conviction for violating section 267. There, our Supreme Court reversed the defendant's conviction where the minor, who "abandoned her home" about "six or seven weeks prior to the alleged abduction" and was working as a prostitute on the streets of San Francisco in the meantime, during which her parents made no attempts to find her and did not contact the authorities, accompanied the defendant to Oakland to work in a house of prostitution. (*Id*. at pp. 767-768.) The court explained: "No one has the right to take [a] young girl away from her father or mother without their consent. In the eyes of the law she is an infant, and no stranger had the right to deprive the father or mother of custody. But if the girl is not a charge of her father or mother, or other person described

in section 267, that section does not apply . . . ." (*Id*. at p. 770.) The court concluded the evidence did not support a finding the minor was taken from the custody of her mother, as alleged in the information, because she was "abandoned" and "not in the legal charge of anyone." (*Ibid*.)

In *People v. Steele* (2014) 225 Cal.App.4th 300 (*Steele*), we distinguished *Flores* and held the evidence was sufficient to support the defendant's conviction for violating section 267. We explained: "In the present case, the jury had no duty to conclude that [the minor's] mother abandoned [her] or relinquished her legal charge of [her daughter]. Although the mother asked [the minor] to leave the house in mid-October 2010, she filed a missing persons report with law enforcement on November 2, 2010, shortly before the present offenses. Moreover, the mother responded to [her daughter's] text message by waiting for [her] outside of [the defendant's girlfriend's] apartment and by taking [the minor] home. For her part, [the minor] testified that she 'technically' does not run away and always returns home. She remained in contact with her mother and had visited her mother in the days prior to the taking. These facts show that [the minor] remained in her mother's legal custody *and* that, contrary to defendant's argument, they enjoyed a substantive parent-child relationship in which the mother endeavored to protect [her daughter's] safety and character. Nothing in section 267 suggests that its protection is unavailable whenever family dynamics end up with a temporary separation of parent and child." (*Id*. at pp. 304-305.)

Thus, in *Steele*, we noted the minor and her mother had a substantive parent-child relationship in response to the defendant's argument they had no such relationship, not as an additional requirement that must be proved to support conviction. All that is required by *Flores* is that the parent or other legal guardian not abandon custody of the minor prior to the alleged abduction. We have no difficulty concluding that test is met here. T. testified she was 16 years old and living with her "family" when she first met defendants. We need not repeat the details of their first few encounters here. It will suffice to note

that when describing her trips to Redding with defendants, T. identified where she lived with her family as her "home." The first time she went to Redding with defendants, Baldwin-Green drove T. home after three days of her feeling uncomfortable about being there. The second time, T. asked to go home after only two days, making Baldwin-Green angry and prompting him to give Williams money to buy her a bus ticket back to Sacramento. The third time, after defendants brought up prostitution and T. said she did not want to do that, she again asked to go home, to which Baldwin-Green responded, "[I] don't give a fuck," and told T. she "will be prostituting" and "would be staying out there for as long as he wants." We have already described what happened next and decline to repeat ourselves here. For present purposes, the evidence is sufficient to establish T., a 16 year-old girl, was living at home with her family when defendants brought her to Redding for purposes of prostitution. And unlike *Flores*, there is no evidence she was abandoned and therefore not in anyone's legal custody at the time of the abduction.

Defendants' convictions in Count 4 for violating section 267 are supported by sufficient substantial evidence of their guilt.

IV

Child Abuse (Count 7)

We further reject defendants' challenges to the sufficiency of the evidence to establish the crime of child abuse.

Section 273a, subdivision (a), provides: "Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health is endangered, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six years."

This provision " 'proscribes essentially four branches of conduct' " (*People v. Valdez* (2002) 27 Cal.4th 778, 783), two of which were pursued as bases for defendants' liability in this case. As the jury was instructed, the prosecution alleged defendants either (1) "willfully caused or permitted [T.] to suffer unjustifiable mental suffering," or (2) "having care or custody of [T.], willfully caused or permitted [her] to be placed in a situation where [her] person or health was endangered." As the jury was also instructed, in addition to proving one of these forms of child abuse, the prosecution was also required to prove defendants' conduct was both "criminally negligent" and engaged in "under circumstances or conditions likely to produce great bodily harm or death."

Defendants do not challenge the sufficiency of the evidence establishing criminal negligence. Rather, they claim the evidence is insufficient to establish the existence of circumstances or conditions likely to produce great bodily harm or death, required for either form of child abuse. They also claim the evidence is insufficient to establish T. was in their care or custody, required for the endangerment form of the crime. Finally, purporting to be non-caretakers, they claim the evidence is insufficient to establish they had a "duty or ability to control the persons," i.e., the customers they sent to have sex with her, "who might have put [T.] at risk of harm." We address and reject each argument in turn.

A.

Circumstances Likely to Produce Great Bodily Harm

"For a defendant to be guilty of violating section 273a, subdivision (a), his [or her] conduct must be willful and it must be committed under circumstances 'likely to produce great bodily harm or death.' [Citation.] 'Great bodily harm refers to significant or substantial injury and does not refer to trivial or insignificant injury.' [Citation.] However, there is no requirement that the victim suffer great bodily harm. [Citation.]" (*People v. Cortes* (1999) 71 Cal.App.4th 62, 80.)

Defendants coerced T. into performing multiple acts of prostitution against her will over the span of about three months. This conduct was likely to result in her sustaining significant injury for at least two reasons. First, there was the danger of violent customers. As several of the victims testified, defendants would often hide in a closet during in-calls in order to protect the girls in case a customer became violent or was another pimp posing as a customer. Baldwin-Green himself stated to one of the victims, G., that other pimps would likely try to take and abuse her "and practically leave [her] out for dead." Second, aside from the real threat of physical violence, engaging in sexual intercourse with numerous men over the course of three months presented a danger of contracting a sexually transmitted disease or becoming pregnant at 16 years of age. (See, e.g., *People v. Cross* (2008) 45 Cal.4th 58, 66 [jury could reasonably conclude minor victim suffered great bodily injury based solely on evidence she became pregnant as the result of unlawful sexual conduct]; *People v. Johnson* (1986) 181 Cal.App.3d 1137, 1140-1141 [jury could reasonably conclude victim suffered great bodily injury based on evidence the defendant infected her with the herpes virus].)

The record is more than sufficient to support a conclusion defendants' conduct was likely to produce great bodily injury.

B.

Defendants Undertook Responsibilities of Custodial Caretakers

"[T]he relevant question in a situation involving an individual who does not otherwise have a duty imposed by law or formalized agreement to care for a child (as in the case of parents or babysitters), is whether the individual in question can be found to have undertaken the attendant responsibilities at all. 'Care,' as used in the statute, may be evidenced by something less than an express agreement to assume the duties of a caregiver. That a person did undertake caregiving responsibilities may be shown by evidence of that person's conduct and the circumstances of the interaction between the defendant and the child; it need not be established by an affirmative expression of a

willingness to do so." (*People v. Perez* (2008) 164 Cal.App.4th 1462, 1476, fn. omitted; *People v. Cochran* (1998) 62 Cal.App.4th 826, 832 ["terms 'care or custody' do not imply a familial relationship but only a willingness to assume duties correspondent to the role of a caregiver"].)

For example, in *People v. Morales* (2008) 168 Cal.App.4th 1075, the defendant was convicted of child endangerment by recklessly driving his car, with a 16-year-old passenger, in an attempt to evade a police officer, speeding through a stop sign and stop light, and ultimately colliding with a telephone pole. (*Id*. at p. 1078.) Rejecting the defendant's argument he was not related to the child, they did not live together, and she had never driven with him in the past, the Court of Appeal concluded sufficient evidence supported a finding she was in his "care or custody" during the drive, explaining: "[The victim] was physically in the care of defendant who was transporting her when he endangered her life by his conduct. As a passenger in his speeding car, [the victim] was deprived of her freedom to leave, and she had no control over the vehicle. The jury could reasonably conclude that in taking it upon himself to control [the victim]'s environment and safety, defendant undertook caregiving responsibilities or assumed custody over her while she was in his car." (*Id*. at pp. 1083-1084.)

Here, the evidence supporting a finding T. was in defendants' care or custody is far more substantial. As we explained in part III of this opinion, the evidence strongly supports the jury's conclusion defendants abducted T. from her custodial caregivers for purposes of prostitution and held her in Redding against her will while she worked for them in that capacity. In doing so, defendants undertook caregiving responsibilities as a matter of law.

C.

Defendants' Final Argument is Foreclosed as a Matter of Law

This brings us to the third component of defendants' challenge to the sufficiency of the evidence supporting their child abuse convictions, i.e., their claimed lack of a "duty

or ability to control" the customers they sent to have sex with T. while she worked for them in Redding. In support of this argument, defendants rely on *People v. Flores* (2016) 2 Cal.App.5th 855, in which the Court of Appeal held the "portion of section 273a that imposes criminal penalties *on noncaretakers* who 'willfully permit[]' the requisite injury to be inflicted on a victim is limited to those persons who had an affirmative duty, under statutory or common law principles, to exert control over the actor who caused or directly inflicted the injury on the victim." (*Id*. at p. 877, italics added.) Here, however, as we explained immediately above, defendants undertook caregiving responsibilities as a matter of law. Moreover, even if that was not the case, they did not simply "willfully permit[]" T. to suffer unjustifiable mental suffering; they *caused* that suffering by forcing her into prostitution. *People v. Flores*, *supra*, is therefore entirely inapposite.

This conclusion also forecloses defendants' further contention their child abuse convictions must be reversed because the jury was not instructed regarding the requirement of a "legal duty [on their part] to supervise and control the conduct of the persons who caused or inflicted unjustifiable physical pain or suffering on the victim."

V

False Imprisonment by Violence or Menace (Counts 9 and 30)

Baldwin-Green further asserts his convictions for false imprisonment of T. and S. by violence or menace must be reversed for lack of sufficient substantial evidence these victims could not leave. He is mistaken.

"False imprisonment is the unlawful violation of the personal liberty of another." (§ 236.) "If the false imprisonment be effected by violence, menace, fraud, or deceit, it shall be punishable by imprisonment pursuant to subdivision (h) of Section 1170." (§ 237.)

" 'All that is necessary to make out a charge of false imprisonment, a misdemeanor, is that "the individual be restrained of his [or her] liberty without any sufficient complaint or authority therefor, and it may be accomplished by words or acts

[together with the requisite intent to confine] which such individual fears to disregard." [Citations.] To raise the offense to a felony, violence or menace, which may or may not be life endangering, . . . must be established. [Citation.]' [Citation.]" (*People v. Islas* (2012) 210 Cal.App.4th 116, 122-123.) "When a rational factfinder could conclude that a defendant's acts or words expressly or impliedly threatened harm, the factfinder may find that there is menace sufficient to make false imprisonment a felony. An express threat or use of a deadly weapon is not necessary." (*People v. Wardell* (2008) 162 Cal.App.4th 1484, 1491.) The term "violence" in the statute simply means the use of force that is "greater than that reasonably necessary to effect the restraint." (*People v. Hendrix* (1992) 8 Cal.App.4th 1458, 1462.)

For example, in *People v. Aispuro* (2007) 157 Cal.App.4th 1509 (*Aispuro*), the defendant stopped two young sisters (ages 13 and 9) as they walked to school, grabbing the hood of the older girl's jacket. When she started to cry and asked him to let go, the defendant told the girls to sit in the road. The older girl refused and the defendant, continuing to hold onto the hood while both girls cried, "said, 'If you don't, then I will do something.' " (*Id*. at p. 1512.) The defendant then walked the girls across the street with his hands on their backs. When the younger girl said she wanted her mother, the defendant "held her in both arms and said, 'It's okay.' " The older girl told him to let them go several times and tried to pull her sister away. The defendant then said, "'Just leave,' " and let them run away. (*Ibid*.) The Court of Appeal held these facts were sufficient to establish menace, emphasizing the defendant's threat to "do something" to the girls if they did not do as he said, his holding of one of the girls' hoods when he made the threat, the age disparity between him and the girls, and the fact that they were crying during the ordeal. (*Id*. at p. 1513.)

In *People v. Ghipriel* (2016) 1 Cal.App.5th 828 (*Ghipriel*), the Court of Appeal upheld three felony false imprisonment convictions where the defendant, the owner of a restaurant, sexually assaulted the victim, a 19-year-old hostess, in his small office. On

several occasions, he pulled her into the office and locked the door. On five occasions, he "cornered her in the office with his much larger body" and sexually assaulted her. On three such occasions, he pinned her against a wall with his body, exposed his penis, and began masturbating. (*Id*. at p. 831.) The court explained, "a host of circumstances" supported a reasonable conclusion the defendant used violence in committing the offense: "Plainly, touching [the victim's] breasts, masturbating in front of her, rubbing his penis on her stomach, and putting his hands down her pants and touching the lips of vagina, were not needed to restrain or otherwise violate [her] liberty. Importantly, [the victim] was vulnerable in a number of respects: she was less than half his age, she weighed less than half of [his] 240 pounds, she was trapped in his small office, and he was her employer at a job she was afraid of losing. In addition to the fact that on at least three separate occasions the sex acts [the defendant] committed involved actual physical contact and [the victim] in no way consented to them, all the acts were profoundly degrading and demeaning. Given the character of the acts and [the victim's] vulnerability on so many levels, [the defendant's] sexual conduct no doubt played a material role in maintaining control over her." (*Id*. at pp. 834-835.)

Here, with respect to T., after she told Baldwin-Green she did not want to work for him as a prostitute, he "got mad and started cussing." When T. said she wanted to go home, Baldwin-Green responded, "[I] don't give a fuck," and said she would be prostituting for him "for as long as he wants." T. then tried to leave the apartment, but Baldwin-Green pulled her back inside and the two yelled at each other in the apartment. Baldwin-Green told her, "you can try to leave all you want, but you will not get far out there" and "this is my city." T. tried to leave again, but he blocked her path to the door. After that, she "just gave up." When Baldwin-Green brought up prostitution again later that night, he told her working for him as a prostitute was "the only way [she would] get back home." He also showed her a video on his cell phone of "a girl getting beat up by a dude and everybody was just sitting there laughing, like it was all fun and games." T.

recognized Baldwin-Green in the video, and while she did not say whether he was the one delivering the blows, she understood the video to depict "what he did to girls before" and described it as "very terrifying." After watching the video, T. "gave in." T. also testified Baldwin-Green hit her once when she tried to refuse to service a customer and bragged "that he got guns and that he know how to use them," which "scared the living hell out of [her]."

We have no difficulty concluding this conduct amounted to restraining T.'s liberty by both menace and violence. The jury could have reasonably concluded Baldwin-Green used the video and bragging about guns as implied threats to harm T., a 16-year-old girl, if she did not stay in the apartment and service customers sexually. This conduct was certainly more menacing than the threat to "do something" uttered in *Aispuro, supra*, 157 Cal.App.4th 1509. (*Id.* at p. 1512.) Baldwin-Green also made good on those implied threats when he hit her for refusing to service a customer. T. testified this act of violence was one of the reasons she did not attempt to leave, even when she and defendants were out in public.[6]

With respect to S., she was similarly restrained at the same apartment in Redding where Baldwin-Green began his false imprisonment of T. S. testified the doorknob on the bedroom door was "switched inside out" such that Baldwin-Green was able to lock it

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[6] The prosecutor also relied in closing argument on Baldwin-Green's conduct at the second apartment they lived at in Redding, emphasizing the restraint on her liberty occasioned by the fact that Baldwin-Green "had every door bolted and locked and he flipped the locks" so they could be locked from the outside. As T. further explained, the windows also had "little bolts" preventing them from opening. T. saw Baldwin-Green installing these bolt locks. She tried to unscrew them at some point, but they were "too hard to unscrew." However, regardless of whether the jury concluded Baldwin-Green unlawfully restrained T.'s liberty at the first apartment or the second apartment, or more likely, at both apartments, it was the implied threats of harm and actual physical violence employed at the first apartment that amounted to the violence or menace elevating the crime to felony false imprisonment.

from the outside. On three or four occasions, he locked her in the bedroom. The second night S. was at the apartment, Baldwin-Green showed her he had a gun and some knives. He also had nonconsensual sex with her on two occasions, once before and once after showing her these weapons. He told her before the first such act of intercourse that she would not be going home unless she had sex with him. As with T., we conclude this conduct amounted to both menace and violence. While Baldwin-Green apparently did not utter any verbal threats to S., or show her the video he showed T., a jury could have reasonably concluded his act of demonstrating he possessed a gun and knives in these circumstances was intended to be an implied threat of harm should she attempt to leave. And as in *Ghipriel, supra,* 1 Cal.App.5th 828, where the defendant's sexual assaults on the victim amounted to more force than reasonably necessary to restrain her in the office, a jury could have reasonably concluded Baldwin-Green's use of S. for his own sexual gratification without her consent after he impliedly threatened her with harm should she attempt to leave amounted to more force than necessary to restrain her.

Nevertheless, relying on *People v. Matian* (1995) 35 Cal.App.4th 480, Baldwin-Green asserts, "there must be evidence of a threat of some kind to sustain a conviction of felony false imprisonment." We decline to describe the *Matian* decision in any detail because, as Baldwin-Green acknowledges, several Court of Appeal decisions, including *Aispuro, supra,* 157 Cal.App.4th 1509, *Ghipriel, supra,* 1 Cal.App.5th 828, *People v. Islas, supra,* 210 Cal.App.4th 116, *People v. Wardell, supra,* 162 Cal.App.4th 1484, and *People v. Castro* (2006) 138 Cal.App.4th 137 (*Castro*), have disagreed with the *Matian* decision's reasoning and result. We agree with these decisions' criticism of *Matian*. We also disagree with Baldwin-Green's assertion there must be a threat of some kind to support a felony false imprisonment conviction. There was no threat in *Ghipriel*. Nor was there a threat in *Castro*. Both cases involved false imprisonment by violence where the defendant used more force than necessary to restrain the victim. So too here. Moreover, while false imprisonment by menace does require a defendant to have

"expressly or impliedly threatened harm," the threat may be made by "*acts* or words." (*People v. Wardell, supra,* 162 Cal.App.4th at p. 1491, italics added.) Baldwin-Green's conduct impliedly threatened harm to both T. and S. His convictions for false imprisonment by violence or menace are supported by substantial evidence.[7]

VI

Forcible Rape (Count 29)

Baldwin-Green contends his conviction for forcible rape of S. must be reversed for lack of sufficient substantial evidence of duress. We must agree.

Forcible rape is "an act of sexual intercourse accomplished with a person not the spouse of the perpetrator" that is "accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person of another." (§ 261, subd. (a)(2).) "As used in this section, 'duress' means a

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[7] Williams also challenges her conviction in Count 9, although she was convicted of the misdemeanor form of the offense and claims the crime of human trafficking of a minor, for which she was convicted in Count 1, necessarily includes the crime of misdemeanor false imprisonment such that she could not be convicted of both offenses. Not so. In determining whether a lesser crime is necessarily included in a greater crime for purposes of deciding whether a defendant may be convicted of multiple charged crimes, we look only to the statutory elements. (*People v. Reed* (2006) 38 Cal.4th 1224, 1229.) "Under the elements test, if the statutory elements of the greater offense include all of the statutory elements of the lesser offense, the latter is necessarily included in the former." (*Id*. at p. 1227.) Here, the crime of human trafficking of a minor does not include all the elements of the crime of misdemeanor false imprisonment such that one may not commit the greater crime without also committing the lesser crime. This is because false imprisonment requires an unlawful violation of a person's liberty, while human trafficking of a minor does not. As we explained in detail earlier in this opinion, to be guilty of human trafficking of a minor, a defendant need only attempt to persuade a minor to engage in a commercial sex act with the requisite specific intent. (§ 236.1, subd. (c).) Attempting to persuade a minor to engage in such an act does not necessarily involve any violation of the minor's liberty. The crime of misdemeanor false imprisonment is therefore not necessarily included in the crime of human trafficking of a minor.

direct or implied threat of force, violence, danger, or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act which otherwise would not have been performed, or acquiesce in an act to which one otherwise would not have submitted. The total circumstances, including the age of the victim, and his or her relationship to the defendant, are factors to consider in appraising the existence of duress." (*Id.*, subd. (b).)

Here, S. testified she and Baldwin-Green had sex twice while she was at the apartment in Redding. The first night she was at the apartment, Baldwin-Green came into the bedroom and told her she would not be going home unless she had sex with him. S. did not want to do so, but complied without objection because she thought she "had to" in order to "make a little money and leave." They had sex again a couple days later. Baldwin-Green did not say anything beforehand. S. did not want to have sex with him this time either. The prosecution argued to the jury the first act of sexual intercourse amounted to rape by means of duress. The jury so found.

As our Supreme Court explained in *People v. Leal* (2004) 33 Cal.4th 999, while the crime of lewd or lascivious conduct with a child can be accomplished by threat of hardship, forcible rape cannot. (*Id.* at p. 1001-1002 [legislative amendments deleting the term "hardship" from the definition of "duress" in the rape statutes did not alter judicial definition of "duress" as used in section 288, subdivision (b)(1)].) On this basis, Baldwin-Green argues he merely threatened hardship when he told S. she would not be going home unless she had sex with him, adding: "[S.] traveled to Redding voluntarily. Having intercourse with her pimp was apparently the 'price of admission' to an activity in which she hoped to make money in exchange for other acts of voluntary intercourse. She was free to leave at any time. If she was worried about the price of a bus ticket back to Sacramento, there were ready resources available to her in the heart of a major city. Even if she might have faced some hardship it was minor and no more than many people face on a daily basis."

We take issue with certain aspects of this argument. For instance, in light of the fact Baldwin-Green locked S. in the bedroom on three or four occasions and impliedly threatened harm to her by showing her the gun and knives the second night she was at the apartment, she was not "free to leave at any time." However, the prosecution relied on the first act of intercourse to support the rape charge. That act occurred on the first night S. was at the apartment, before Baldwin-Green displayed the weapons and apparently before he began locking her in the bedroom. The record is unclear as to whether S. could have simply left the apartment that first night had she declined to have sex with Baldwin-Green. Nevertheless, based on a close reading of S.'s testimony, we conclude she did not interpret his statement as a threat of "force, violence, danger, or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act which otherwise would not have been performed, or acquiesce in an act to which one otherwise would not have submitted." (§ 261, subd. (b).) Indeed, as she put her reason for having sex with Baldwin-Green that night, she wanted to "make a little money and leave."

We conclude the evidence is not sufficient to establish the first act of sexual intercourse was accomplished by duress.[8]

INSTRUCTIONAL ERROR

VII

No Unanimity Instruction Regarding Child Abuse

Both defendants claim their child abuse convictions of T. must be reversed because the jury was not given a unanimity instruction. They are mistaken.

A criminal defendant has a constitutional right to a unanimous jury verdict, meaning, "the jury must agree unanimously the defendant is guilty of a *specific* crime."

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[8] Whether or not the second act of sexual intercourse, after Baldwin-Green displayed the weapons, was accomplished by duress is not before us. We express no opinion on the matter.

(*People v. Russo* (2001) 25 Cal.4th 1124, 1131, italics added.) Thus, "if one criminal act is charged, but the evidence tends to show the commission of more than one such act, '*either* the prosecution must elect the specific act relied upon to prove the charge to the jury, *or* the court must instruct the jury that it must unanimously agree that the defendant committed the same specific criminal act.' [Citation.]" (*People v. Napoles* (2002) 104 Cal.App.4th 108, 114, italics added (*Napoles*).) In such a case, where no election has been made by the prosecution, the trial court possesses a sua sponte duty to provide a unanimity instruction. (*People v. Dieguez* (2001) 89 Cal.App.4th 266, 274-275.)

However, there is an exception to this instructional duty. "Even when the prosecution proves more unlawful acts than were charged, no unanimity instruction is required where the acts proved constitute a continuous course of conduct." (*Napoles*, *supra*, 104 Cal.App.4th at p. 115, citing *People v. Diedrich* (1982) 31 Cal.3d 263, 282.) " 'This exception arises in two contexts. The first is when the acts are so closely connected that they form part of one and the same transaction, and thus one offense. [Citation.] The second is when . . . the statute contemplates a continuous course of conduct of a series of acts over a period of time. [Citation.] [¶] This second category of the continuous course of conduct exception has been applied to a limited number of varying crimes, including . . . failure to provide for a minor child [citation], contributing to the delinquency of a minor [citation], and child abuse [citation].' [Citation.]" (*People v. Avina* (1993) 14 Cal.App.4th 1303, 1309.)

Here, both categories of the continuous course of conduct exception apply. Beginning with the latter category, section 273a, subdivision (a), clearly contemplates a continuous course of conduct. We have previously so held in *People v. Ewing* (1977) 72 Cal.App.3d 714, explaining: "Although the child abuse statute may be violated by a single act [citation], more commonly it covers repetitive or continuous conduct." (*Id*. at p. 717; see also *People v. Vargas* (1988) 204 Cal.App.3d 1455, 1462.)

However, because child abuse is not invariably a course of conduct offense, we also address the first category of the exception and conclude the acts proven in this case were so closely connected that they formed part of one and the same transaction, and thus one offense. (See *People v. Avina*, *supra*, 14 Cal.App.4th at p. 1309.)

In *Napoles*, *supra*, 104 Cal.App.4th 108, the Court of Appeal relied on two related factors in concluding the child abuse at issue in that case formed a single transaction. First, the information alleged one violation of section 273a, subdivision (a), for conduct occurring between two specified dates. (*Id*. at p. 116.) So too here. Thus, "[t]he issue before the jury was whether [defendants were] guilty of the course of conduct, not whether [they] had committed a particular act on a particular day." (*People v. Ewing*, *supra*, 72 Cal.App.3d at p. 717.) Second, the evidence in *Napoles* established "a pattern of physical trauma inflicted upon [the victim] within a relatively short period of time" and was therefore "consistent with the theory alleged in the information," i.e., that the crime was a continuing violation occurring between the two specified dates. (*Napoles*, *supra*, at pp. 116-117.) Here, while the abuse suffered by T. involved "unjustifiable mental suffering" and being "placed in a situation where [her] person or health was endangered," rather than physical abuse, the evidence established the continuing conduct of defendants, i.e., forcing T. to work for them as a prostitute during the span of about three months, constituted a single violation of section 273a, subdivision (a).

The trial court neither erred nor violated defendants' constitutional rights by declining to provide a unanimity instruction with respect to the child abuse charge.

VIII

No Instruction Regarding Defense of Consent to Human Trafficking

Baldwin-Green further asserts his convictions for human trafficking of C. and S. (Counts 13 and 26) must be reversed because the jury was not instructed regarding the defense of consent and that the lack of consent must be proven by the prosecution. Not so.

C. and S. were adults when defendants committed these trafficking offenses against them. Accordingly, defendants were charged with violating section 236.1, subdivision (b). As with human trafficking of a minor (subdivision (c)), discussed in detail above, this offense requires a specific intent to effect or maintain a violation of one or more provisions of the Penal Code, including those prohibiting pimping and pandering, as alleged here. Unlike subdivision (c), however, the actus reus of the adult version of human trafficking requires more than causing, inducing, persuading, or attempting to cause, induce, or persuade, the victim to engage in a commercial sex act; subdivision (b) requires the defendant to "deprive[] or violate[] the personal liberty of another" with the requisite specific intent. (§ 236.1, subd. (b).)

Baldwin-Green argues this crime is "a form of false imprisonment, as to which consent is a defense," and "lack of consent was a necessary element." He asserts the trial court was therefore required to instruct the jury sua sponte on both matters. We agree both false imprisonment and human trafficking of an adult require the unlawful violation of the personal liberty of another (compare §§ 236 and 236.1, subd. (b)), such that an alleged victim's free and voluntary consent would negate criminal culpability under either provision entirely. Indeed, when the trial court instructed the jury on the crime of false imprisonment, it stated one of the elements the prosecution was required to prove was "[t]he defendant's act made [a] person stay or go somewhere against that person's will," and elaborated: "An act is done against a person's will if that person does not consent to the act. In order to consent, a person must act freely and voluntarily and know the nature of the act."

However, the instruction defining the crime of human trafficking, CALCRIM No. 1243, did not include similar language regarding consent. Instead, it defined "[d]epriving or violating another person's personal liberty" as including "substantial and sustained restriction of another person's liberty accomplished through force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another

person under circumstances in which the person receiving or perceiving the threat reasonably believes that it is likely that the person making the threat would carry it out." The instruction then defined duress, violence, menace, and coercion, and concluded by instructing the jury: "When you decide whether the defendant used duress or coercion, or deprived another person of personal liberty or violated that other person's personal liberty, consider all of the circumstances, including the age of the other person, her [or his] relationship to the defendant, and the other person's handicap or disability." This instructional language tracks the language of the statute. (§ 236.1, subds. (h)(3), (i).)

The Attorney General argues that by specifically defining "[d]eprivation or violation of the personal liberty of another" without explicitly requiring a lack of consent on the part of the person who is deprived of such liberty, or whose personal liberty is violated, the Legislature neither intended lack of consent to be an element of the crime nor intended consent to be a defense. We are not persuaded. If C. or S. freely and voluntarily consented to the confinement, Baldwin-Green did not unlawfully deprive or violate their personal liberty. While section 236.1, subdivision (h), states such a deprivation or violation "*includes* substantial and sustained restriction of another person's liberty accomplished through force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person under circumstances in which the person receiving or perceiving the threat reasonably believes that it is likely that the person making the threat would carry it out" (italics added), use of the word "includes" indicates what comes next is not an exhaustive list of circumstances the jury may find to be a deprivation or violation of personal liberty. However, nothing in the definition indicates a jury could find such a deprivation or violation despite free and voluntary consent on the part of the alleged victim. On the contrary, each listed circumstance would negate the existence of such consent. For example, consent is not voluntary if it is the product of duress or coercion. Nor is it knowing if it is the product of fraud or deceit. (See 1 Witkin and Epstein, Cal. Criminal Law (4th ed. 2012)

Defenses, § 99, pp. 546-547; *id*., Crimes Against the Person, § 273, p. 1099.) Thus, nothing in the definition indicates the Legislature intended to dispense with what was already an implied element of false imprisonment, i.e., lack of consent on the part of the victim.

Nevertheless, we need not determine whether or not the jury should have been specifically instructed with the consent language that appears in the false imprisonment instruction because even if the trial court had a sua sponte duty to modify CALCRIM No. 1243 to provide this language to the jury, we conclude the error was harmless. An instructional error that improperly describes or omits an element of an offense is harmless if it appears beyond a reasonable doubt that the error did not contribute to the jury's verdict. (*People v. Flood* (1998) 18 Cal.4th 470, 502-504; *People v. Cox* (2000) 23 Cal.4th 665, 677, fn. 6 [stating the standard as, "Is it clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error?"].) Here, the jury would have understood lack of consent to be a requirement from the inclusion of "force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person under circumstances in which the person receiving or perceiving the threat reasonably believes that it is likely that the person making the threat would carry it out" as examples of circumstances involving a "substantial and sustained restriction of another person's liberty." (CALCRIM No. 1243.) Moreover, with respect to each victim, the jury also found Baldwin-Green guilty of false imprisonment by violence or menace (Counts 18 and 30). As already indicated, with respect to this crime, the jury was specifically instructed the prosecution was required to prove "[t]he defendant's act made [a] person stay or go somewhere against that person's will," and elaborated: "An act is done against a person's will if that person does not consent to the act. In order to consent, a person must act freely and voluntarily and know the nature of the act."

We conclude beyond a reasonable doubt the consent issue was resolved against Baldwin-Green and any assumed instructional error was therefore harmless.

IX

Flight Instruction

Baldwin-Green's final instructional error claim is that the trial court prejudicially erred by instructing the jury on flight as evidence of consciousness of guilt. He did not, however, object to this instruction at trial. "Failure to object to instructional error forfeits the issue on appeal unless the error affects defendant's substantial rights. [Citations.] The question is whether the error resulted in a miscarriage of justice under *People v. Watson* (1956) 46 Cal.2d 818, 299 P.2d 243. [Citation.]" (*People v. Anderson* (2007) 152 Cal.App.4th 919, 927.) We conclude there was no error, much less a miscarriage of justice.

Section 1127c provides: "In any criminal trial or proceeding where evidence of flight of a defendant is relied upon as tending to show guilt, the court shall instruct the jury substantially as follows: [¶] The flight of a person immediately after the commission of a crime, or after he [or she] is accused of a crime that has been committed, is not sufficient in itself to establish his [or her] guilt, but is a fact which, if proved, the jury may consider in deciding his [or her] guilt or innocence. The weight to which such circumstance is entitled is a matter for the jury to determine." The jury was so instructed in this case.

"[A] flight instruction 'is proper where the evidence shows that the defendant departed the crime scene under circumstances suggesting that his [or her] movement was motivated by a consciousness of guilt.' [Citation.] ' " '[F]light requires neither the physical act of running nor the reaching of a far-away haven. [Citation.] Flight manifestly does require, however, a purpose to avoid being observed or arrested.' " ' [Citation.]" (*People v. Bradford* (1997) 14 Cal.4th 1005, 1055.) "Alternate explanations

for flight conduct go to the weight of the evidence, which is a matter for the jury, not the court, to decide." (*People v. Rhodes* (1989) 209 Cal.App.3d 1471, 1477.)

Here, the prosecutor relied on the following evidence of flight during closing argument. First, after being left naked on the side of a rural road, C. sought help from a mother and daughter who lived down a long driveway. As she spoke to the mother in front of the house, Baldwin-Green's car drove partway down the driveway and quickly turned around and left again. That car was then left at a gas station outside Redding. Second, when T. escaped from the second apartment where Baldwin-Green held her captive in Redding, she went to a neighbor for help, who eventually brought T. into her niece's house on the same street. After police arrived, the niece saw both defendants in a white car drive three-quarters of the way down the street before the car was put "in reverse and went out of there pretty fast." We have no difficulty concluding this evidence supports an inference defendants departed each time with an intent to avoid being observed or arrested. There was no instructional error.

X

Baldwin-Green's Exclusion from the Jury Instruction Conference

In a related claim, Baldwin-Green asserts he was deprived of his federal constitutional right to due process by being excluded from the discussion between the trial court and counsel regarding the jury instructions. Not so.

"[A] criminal defendant has a right to be personally present at certain pretrial proceedings and at trial under various provisions of law, including the confrontation clause of the Sixth Amendment to the United States Constitution, the due process clause of the Fourteenth Amendment to the United States Constitution, section 15 of article I of the California Constitution, and sections 977 and 1043." (*People v. Cole* (2004) 33 Cal.4th 1158, 1230; *People v. Kelly* (2007) 42 Cal.4th 763, 781-782.) "Although . . . this privilege of presence is not guaranteed 'when presence would be useless, or the benefit but a shadow,' [citation], due process clearly requires that a defendant be allowed to be

present 'to the extent that a fair and just hearing would be thwarted by his [or her] absence,' [citation]. Thus, a defendant is guaranteed the right to be present at any stage of the criminal proceeding that is critical to its outcome if his [or her] presence would contribute to the fairness of the procedure." (*Kentucky v. Stincer* (1987) 482 U.S. 730, 745 [96 L.Ed.2d 631].)

Generally, a criminal defendant "is not entitled to be present either in chambers or at bench discussions on questions of law" because his or her "presence on these occasions does not bear a 'reasonably substantial relation to the fullness of his [or her] opportunity to defend' . . . against the charges. [Citations.] Consistent with this principle, an informal conference on jury instructions is not a proceeding at which a defendant's presence is constitutionally necessary. [Citations.]" (*People v. Morris* (1991) 53 Cal.3d 152, 210, overruled on other grounds in *People v. Stansbury* (1995) 9 Cal.4th 824, 830, fn. 1; *United States v. Sherman* (9th Cir.1987) 821 F.2d 1337, 1339 [no constitutional or statutory right to attend jury instruction conference].) We therefore reject Baldwin-Green's assertion the federal Constitution required his presence at the jury instruction conference.

SENTENCING ERROR

XI

Section 654 Claims

Both defendants contend the sentences imposed on several counts should have been stayed pursuant to section 654. We agree with respect to certain counts and disagree with respect to others, as we explain immediately below.

A.

Legal Principles

"An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one

provision." (§ 654, subd. (a).) "The purpose of this statute is to prevent multiple punishment for a single act or omission, even though that act or omission violates more than one statute and thus constitutes more than one crime. Although these distinct crimes may be charged in separate counts and may result in multiple verdicts of guilt, the trial court may impose sentence for only one of the separate offenses arising from the single act or omission—the offense carrying the highest punishment." (*People v. Hutchins* (2001) 90 Cal.App.4th 1308, 1312; *People v. Mendoza* (1997) 59 Cal.App.4th 1333, 1345.)

"Whether a defendant may be subjected to multiple punishment under section 654 requires a two-step inquiry, because the statutory reference to an 'act or omission' may include not only a discrete physical act but also a course of conduct encompassing several acts pursued with a single objective." (*People v. Corpening* (2016) 2 Cal.5th 307, 311.) Where "different crimes were completed by a 'single physical act[]' . . . the defendant may not be punished more than once for that act." (*Ibid*.) For example, "the forceful taking of a vehicle on a particular occasion is a single physical act under section 654" despite the fact that this act amounts to both a robbery and a carjacking. (*Id*. at pp. 313-314.)

Where there is more than one physical act, the following rule applies: "Whether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the intent and objective of the actor. If all of the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one." (*Neal v. State of California* (1960) 55 Cal.2d 11, 19, disapproved on another point in *People v. Correa* (2012) 54 Cal.4th 331, 338; *People v. Rodriguez* (2009) 47 Cal.4th 501, 507.) "In such a case, the defendant's single intent and objective are treated as a single act. For example, a defendant who enters a building with the intent to commit theft and then takes something of value cannot be sentenced for

both burglary and theft. Although defendant committed two criminal acts (entering the building and taking the property), the two acts 'were parts of a continuous course of conduct and were motivated by one objective, theft; the burglary, although complete before the theft was committed, was incident to and a means of perpetrating the theft.' [Citation.]" (*In re Jose P.* (2003) 106 Cal.App.4th 458, 469, disapproved on another point in *People v. Prunty* (2015) 62 Cal.4th 59, 78, fn. 5; see also *People v. Latimer* (1993) 5 Cal.4th 1203, 1216 [defendant convicted of kidnapping and rape; separate punishment for kidnapping not permitted because the sole objective of the kidnapping was to facilitate the rape].)

However, if the "defendant harbored 'multiple criminal objectives,' which were independent of and not merely incidental to each other, he [or she] may be punished for each statutory violation committed in pursuit of each objective, 'even though the violations shared common acts or were parts of an otherwise indivisible course of conduct.' [Citation.]" (*People v. Harrison* (1989) 48 Cal.3d 321, 335.)

Moreover, "a course of conduct divisible in time, although directed to one objective, may give rise to multiple violations and punishment." (*People v. Beamon* (1973) 8 Cal.3d 625, 639, fn. 11.) "This is particularly so where the offenses are temporally separated in such a way as to afford the defendant opportunity to reflect and renew his or her intent before committing the next one, thereby aggravating the violation of public security or policy already undertaken." (*People v. Gaio* (2000) 81 Cal.App.4th 919, 935.)

" 'Whether section 654 applies in a given case is a question of fact for the trial court, which is vested with broad latitude in making its determination. [Citations.] Its findings will not be reversed on appeal if there is any substantial evidence to support them. [Citations.] We review the trial court's determination in the light most favorable

to the respondent and presume the existence of every fact the trial court could reasonably deduce from the evidence.' " (*People v. Ortiz* (2012) 208 Cal.App.4th 1354, 1378.)

With these legal principles in mind, we turn to defendants' arguments regarding specific counts.

B.

Counts 5 and 8

Counts 5 and 8 involve crimes committed against T. Defendants argue section 654 barred multiple punishment for aggravated human trafficking of a minor (Count 1), pimping a minor (Count 5), and modeling a minor for commercial sex acts (Count 8) because they had the same intent and objective in committing each crime, i.e., effecting or maintaining a violation of section 266h (pimping) or section 266i (pandering).[9] The Attorney General concedes the point. We concur. The sentences imposed on Counts 5 and 8 should have been stayed.

C.

Counts 15, 24, 25, and 37

Defendants make essentially the same argument with respect to Counts 15 (involving C.), 24 and 25 (involving Ad.), and 37 (involving K.). They argue section 654 barred multiple punishment for human trafficking (Counts 13, 23, and 35, respectively) and either pandering (Count 15, involving C.), pimping a minor (Count 37, involving K.), or pimping and pandering a minor (Counts 24 and 25, involving Ad.) because defendants had the same intent and objective, again, effecting or maintaining a violation of the pimping or pandering statute. The Attorney General again concedes the point, but points out the trial court already stayed Count 25. We again concur. The sentences imposed on Counts 15, 24, and 37 should have been stayed.

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[9] As previously noted, Count 8 was charged against Baldwin-Green only. Thus, Williams joins in this argument only with respect to Count 5.

D.

Counts 27, 28, and 34

Counts 27 and 28 involve S. Count 34 involves G. The same argument is made with respect to these counts as that set forth above. We discuss them separately because the Attorney General does not concede error occurred with respect to these counts.

Once again, defendants argue section 654 barred multiple punishment for human trafficking (Counts 26 and 31, respectively), and pimping (Count 34, involving G.) and pimping and pandering (Counts 27 and 28, involving S.) because defendants had the same intent and objective in committing the offenses.[10] The Attorney General points out with respect to S. that Baldwin-Green was convicted of human trafficking under section 236.1, subdivision (b), requiring a deprivation or violation of the personal liberty of another, and argues he was already pimping and pandering S. when he locked her in the bedroom and showed her he had a gun and knives in order to keep her in the apartment. Thus, according to the Attorney General, Baldwin-Green began "a new criminal transaction, with a different, more culpable objective" when he committed the human trafficking offense. The Attorney General similarly points out with respect to G. that defendants were convicted of aggravated human trafficking of a minor, requiring the existence of one of the aggravating circumstances, and argues they were already pimping G. when they "began using force to human traffic [her]." Thus, according to the Attorney General, they "formed a more culpable intent" in committing the human trafficking offense and may be separately punished for both offenses.

The Attorney General does not cite us to any authority directly on point. Nor have we found any on our own. However, we do not believe there is an appreciable difference in culpability between a defendant who deprives someone of liberty or uses force in order

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[10] As also previously noted, Counts 27 and 28 were charged against Baldwin-Green only. Thus, Williams asserts the claim only with respect to Count 34.

to procure or derive income from that person's work as a prostitute, in which case section 654 would bar multiple punishment for the pimping or pandering offense, and another defendant who, during an ongoing violation of the pimping or pandering statutes, deprives the victim of liberty or uses force in order to continue the violation. As our Supreme Court has stated, "the purpose of section 654 is to ensure that a defendant's punishment will be commensurate with his [or her] culpability." (*People v. Correa, supra*, 54 Cal.4th at p. 341.) The sentences imposed on Counts 27, 28, and 34 should have been stayed.

E.

Counts 12 and 22

Counts 12 and 22 involve Az. and C., respectively. Defendants' argument with respect to these counts is that they cannot be separately punished for both pimping (Counts 11 and 21) and pandering (Counts 12 and 22) the same victim because they had the same intent and objective in doing each, i.e., "sett[ing] up another person as a prostitute and continu[ing] the victim in that state."[11] The Attorney General disputes this contention, arguing defendants possessed separate and independent objectives in pimping and pandering these victims, and even if the objective was the same, the offenses were divisible in time such that multiple punishment was nevertheless allowed. We agree with defendants.

"It is necessarily part of the aim, objective and intent of a panderer that the person who is the object of the pandering become a prostitute. Whether or not the latter actually goes on to become a prostitute or to perform acts of prostitution, it is indisputable that the

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[11] Again we note Count 12 was charged against Baldwin-Green only. Thus, Williams joins in this argument only with respect to Count 22. We also note Baldwin-Green makes the same argument with respect to Count 28. However, having concluded both Counts 27 and 28 should have been stayed for a different reason in part XI D., we dispense with this portion of Baldwin-Green's argument.

panderer specifically intends and hopes that the person will do so. Thus, as a general rule, any acts of prostitution that follow directly or proximately from the pandering are incident to a single objective and therefore constitute an indivisible transaction with it; that is, the subsequent sex offenses are incidental to the commission of the pandering, and are facilitated by it." (*People v. Deloach* (1989) 207 Cal.App.3d 323, 337.) Similarly, while it is possible to pander a person without also having designs on becoming that person's pimp, where the panderer procures the person for the purpose of prostitution with such designs, as in this case, part of the intent and objective of the panderer is to derive income from the person's subsequent acts of prostitution.

Here, both defendants (in Counts 21 and 22), and Baldwin-Green (in Counts 11, 12, 27, and 28), intended to convince the victims to engage in prostitution *in order to make money from that activity*. Thus, while defendants committed two criminal acts (procuring a person for prostitution and deriving income from that person's subsequent acts of prostitution), the two acts were parts of a continuous course of conduct and were motivated by one objective, pimping the victim. In other words, the pandering, although complete before the pimping was committed, was incident to and a means of perpetrating the latter crime.

With respect to temporal divisibility, relied upon by the trial court in separately punishing the two crimes, the Attorney General argues enough time passed between the pandering and the pimping to have allowed defendants to reflect upon their behavior and renew their intent before taking money from the victims. With respect to C., she was first encouraged to leave her previous pimp about two days before she and defendants devised a plan for her to run away from that pimp and begin working for them. However, once she was procured as one of their prostitutes, the record indicates she began "doing dates" shortly after they took photographs of her and posted an online advertisement for her services. With respect to Az., a "day or so" elapsed between Baldwin-Green's messages to her about prostitution and the time she agreed to work for him in Redding, but once

she was procured for that purpose, Baldwin-Green drove her to Redding that night, took photographs of her, put up an online advertisement for her services, and began booking dates.

Thus, with respect to each victim, the record reveals defendants harbored an intent to procure and derive an income from them as prostitutes prior to their agreement to the arrangement, and as soon as they agreed, defendants immediately took steps to derive that income as soon as practicable. This is not a case, such as *People v. Leonard* (2014) 228 Cal.App.4th 465, in which the crime of pandering ceased for a period of time while the victim was in a drug rehabilitation program and then the defendant renewed his intent to force her to work for him as a prostitute. (*Id*. at p. 499.) Here, a single intent to have the victims work for defendants as prostitutes continued throughout. Nor is this a case, such as *People v. Louie* (2012) 203 Cal.App.4th 388, relied upon by the Attorney General, in which the defendant completed one crime, making a criminal threat, before "set[ting] about provisioning himself" to commit another crime, arson. (*Id*. at p. 399.) The pandering offense was ongoing.

Simply put, as in *People v. Deloach*, *supra*, 207 Cal.App.3d 323, where various consensual sex acts followed "directly or proximately from the pandering" and were held to be "incident to a single objective" (*id*. at p. 337), so too did defendants' act of taking money from the victims after they performed various consensual sex acts follow directly and proximately from the pandering offense. The sentences imposed on Counts 12 and 22 should have been stayed.

F.

Count 13

Finally, Count 13 is the human trafficking offense committed against C. that we already concluded was committed with the same intent and objective as the pandering offense in Count 15, requiring a stay of the latter count. Defendants additionally claim Count 13 must also be stayed because their commission of that crime was with the same

intent and objective as their commission of aggravated kidnapping in Count 38. We disagree.

Counts 13 and 38 involved the events occurring after C. left defendants. About a month later, defendants executed a ruse to get C. into a car with a man claiming to want her services. That man drove her to defendants, who drove her to a motel in Red Bluff. During the drive, Baldwin-Green physically assaulted C. in the back seat and told her she owed him $1,300 for damage done to his car when her cousin shot at him on the freeway. He said he was going to take her "to the woods" where he would "cut off all of [her] hair and . . . take all of [her] teeth out." He also threatened to find a cold mountain and "leave [her] there naked . . . to die." Baldwin-Green held C.'s head down and covered her face with a bandana while he threatened her, but she could feel a crescent wrench tightening around her fingers as he threatened to cut them off. C. was "crying and shaking" and told him she wanted to go home. He said she could not leave because she owed him money. C. understood this to mean she would be required to go back to work for him as a prostitute. When they got to the motel, Baldwin-Green escorted C. to the room holding her arm with one hand and a hammer with the other. Inside the room, he asked C. whether she "was going to make his money." C. said no and repeatedly asked to go home. After some yelling and arguing, including Williams telling C. to "just give him his money," Baldwin-Green said he would take her home the following morning. The next morning, Williams tried to convince C. to pay Baldwin-Green back by working for them as a prostitute. She again refused and asked to go home. Instead of taking her home, defendants cut off her hair, forced her to remove her clothes, and left her on the side of a rural road.

Based on these events, defendants were convicted in Count 13 of human trafficking of an adult, i.e., depriving or violating C.'s liberty with the intent to pimp or pander her, and in Count 38 with kidnapping for extortion, i.e., abducting and carrying her away with the intent to hold and detain her in order to get money or something of

value, specifically $1,300 to be made from her services as a prostitute. The trial court impliedly found these offenses were divisible. We conclude this finding is supported by substantial evidence. Defendants violated C.'s liberty with the intent to pander her the moment she was detained in the car against her will. And while, as we have explained, the trafficking offense was a means of committing the pandering offense (Count 15), such that defendants could not be separately punished for the latter offense, the relationship between the trafficking and the kidnapping is not so straightforward. Both involved defendants' desire to have C. work for them as a prostitute, but they kidnapped her to extort a specific amount Baldwin-Green felt personally owed because C.'s cousin had shot his car. The kidnapping also involved physical violence and threats to cut off her fingers, take out her teeth, and leave her naked in the cold to die. This was not simply a situation in which defendants sought to have C. work for them and violated her liberty to ensure she did so. It was personal, as further evidenced by the video Baldwin-Green had Williams take, and his statement in that video, "this is what we do to bitches that . . . didn't care that we was nice."

We conclude that while the intent and objective of both offenses was similar, and overlapped to a great extent, it was sufficiently distinct and independent to justify multiple punishment.

XII

Sentence Imposed on Count 6 Must be Stricken

We also agree with Baldwin-Green that the sentence imposed on Count 6 must be stricken. As the Attorney General concedes, the jury did not reach a verdict as to Count 6 and the trial court declared a mistrial as to this count. The sentence imposed thereon was therefore unauthorized and must be stricken. Moreover, the trial court also imposed a court operations assessment of $1,360 pursuant to section 1465.8, subdivision (a), providing that "an assessment of forty dollars ($40) shall be imposed on every conviction for a criminal offense . . . ." This calculation is based on 34 counts of conviction,

including Count 6, and must be reduced to $1,320 to reflect Baldwin-Green was actually convicted of 33 counts.

XIII

Cruel and/or Unusual Punishment

Baldwin-Green's final assertion in this appeal is the sentence imposed for his numerous crimes amounted to cruel and/or unusual punishment under the state and federal Constitutions. The contention is forfeited for two reasons, his failure to raise it before the trial court and his failure to adequately brief it before this court. Nor has Baldwin-Green raised ineffective assistance of counsel as an alternative vehicle to raise the claim now. For these reasons, as we explain more fully below, we decline to address the issue on the merits.

Because the determination of whether or not a sentence imposed in a particular case violates the constitutional proscription against cruel and/or unusual punishment is "fact specific, the issue must be raised in the trial court." (*People v. DeJesus* (1995) 38 Cal.App.4th 1, 27; see also *People v. Em* (2009) 171 Cal.App.4th 964, 971, fn. 5.) Baldwin-Green did not do so.

Nevertheless, he argues applicability of the "unauthorized sentence" exception to the forfeiture rule. However, even if he were right about his sentence amounting to cruel and/or unusual punishment, it would not thereby also be "unauthorized" within the meaning of the exception. As our Supreme Court has explained, "the 'unauthorized sentence' concept constitutes a narrow exception to the general requirement that only those claims properly raised and preserved by the parties are reviewable on appeal." (*People v. Scott* (1994) 9 Cal.4th 331, 354.) "Although the cases are varied, a sentence is generally 'unauthorized' where it could not lawfully be imposed under any circumstance in the particular case. Appellate courts are willing to intervene in the first instance because such error is 'clear and correctable' *independent of any factual issues presented by the record at sentencing*. [Citation.]" (*Ibid*., italics added.) With the exception of

modifications we are making to the judgment for reasons stated previously, the sentence imposed was authorized by the Penal Code. Whether or not that authorized sentence nevertheless amounted to cruel and/or unusual punishment in violation of the state or federal Constitutions is a fact-specific inquiry. (See *In re Lynch* (1972) 8 Cal.3d 410, 424-427 (*Lynch*) [one of the techniques for determining whether or not a punishment is "so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity" requires examination of the nature of the offense and/or the offender with particular regard to the degree of danger both present to society]; see also *Harmelin v. Michigan* (1991) 501 U.S. 957, 1008 [115 L.Ed.2d 836] [considering "the circumstances of the crime" in assessing whether or not the punishment was grossly disproportionate].) Because the constitutional error asserted by Baldwin-Green is not clear and correctable independent of factual issues presented by the record at sentencing, we conclude he was required to present the issue below and his failure to do so forfeits the claim on appeal.

The claim is also forfeited for a second reason: his failure to adequately brief the issue on appeal. (See *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785 [points raised but unsupported by "reasoned argument and citations to authority" are deemed forfeited]; see also *People v. Stanley* (1995) 10 Cal.4th 764, 793 [failure to specify how evidence failed to support verdict forfeited sufficiency of the evidence claim].)

Here, between his opening and reply briefs, Baldwin-Green's argument regarding the purportedly cruel and/or unusual nature of his sentence spans less than four pages. While he cites the relevant state and federal constitutional provisions, including the three techniques set forth by our Supreme Court in *Lynch*, *supra*, 8 Cal.3d at pages 425 to 427,

he offers no substantive analysis with respect to any of these techniques.[12] Nor does he explain why, in his view, the overall sentence imposed is an " 'extreme sentence[] that [is] "grossly disproportionate" to the crime[]' . . ." under the federal standard. (*Ewing v. California* (2003) 538 U.S. 11, 23 [155 L.Ed.2d 108].) Instead, in the opening brief, Baldwin-Green argues the trial court supplied "insufficient reasons [for] impos[ing] consecutive life terms" and states in conclusory fashion that the trial court used these reasons "to justify an unconstitutional sentence." Then, in the reply, he offers a perfunctory, two-paragraph analysis of the first *Lynch* technique, with no citations to authority, and an excuse for his continued failure to address either the second or third *Lynch* technique, i.e., the crime of human trafficking "has only been on the books in California since 2012" and "[t]o [his] knowledge there are no comparable statutes in other jurisdictions," while citing in a footnote a federal statute providing for a life term for sex trafficking a minor. (22 U.S.C. § 1591.) We consider these attempts at briefing to fall far short of the requirement that he provide this court with "reasoned argument" supporting his cruel and/or unusual punishment claim. (*Badie v. Bank of America*, *supra*, 67 Cal.App.4th at p. 784.)

Moreover, while a number of appellate decisions have addressed the merits of the defendant's cruel and/or unusual punishment claim notwithstanding the failure to raise the issue below (see, e.g., *People v. Em*, *supra*, 171 Cal.App.4th at p. 971, fn. 5; *People v. DeJesus*, *supra*, 38 Cal.App.4th at p. 27), we presume the defendants in those cases

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12 In *Lynch*, *supra*, 8 Cal.3d 410, our Supreme Court described three "techniques" the courts have used to administer the California Constitution's prohibition against cruel or unusual punishment: (1) an examination of the nature of the offense and/or the offender with particular regard to the degree of danger both present to society; (2) a comparison of the challenged penalty with the punishments prescribed for more serious offenses in the same jurisdiction, and (3) a comparison of the challenged penalty with the punishments prescribed for the same offense in other jurisdictions having an identical or similar constitutional provision. (*Id.* at pp. 425-427.)

presented adequate briefing on the issue. As we explained above, Baldwin-Green has not done so. Nor has he raised ineffective assistance of counsel as an alternative vehicle to raise the claim now, or supplied this court with any briefing on the issue of ineffective assistance of counsel. We would therefore deem any such claim to be forfeited as well. (See *People v. Bryant* (2013) 222 Cal.App.4th 1196, 1206, fn. 11.)

XIV

Franklin *Remand*

Williams claims we must order a limited remand under *People v. Franklin* (2016) 63 Cal.4th 261 (*Franklin*). The Attorney General agrees. We concur.

In *Franklin, supra*, 63 Cal.4th 261, our Supreme Court held that "a juvenile may not be sentenced to the functional equivalent of LWOP for a homicide offense without the protections outlined in [*Miller v. Alabama* (2012) 567 U.S. 460 [183 L.Ed.2d 407] (*Miller*)]." (*Id.* at p. 276.) However, the court also held the Legislature's passage of Senate Bill No. 260 (2013-2014 Reg. Sess.), which became effective January 1, 2014, and which provides juvenile offenders with an opportunity for parole at least by their 25th year of incarceration, renders moot an assertion that "an otherwise lengthy mandatory sentence" was imposed in violation of *Miller*, at least where the defendant is not excluded from eligibility for such a parole hearing. (*Franklin, supra*, at pp. 279-280.) In so holding, the court explained Senate Bill No. 260 added section 3051 to the Penal Code (Stats. 2013, ch. 312, § 4), "which requires the Board [of Parole Hearings] to conduct a 'youth offender parole hearing' during the 15th, 20th, or 25th year of a juvenile offender's incarceration," depending on the length of the offender's " 'controlling offense.' " (*Franklin, supra*, at p. 277, quoting former § 3051, subds. (a)(2)(B), (b).) Thus, section 3051 "provides all juvenile offenders with a parole hearing during or before their 25th year of incarceration," unless they come within one of the statute's exclusions, set forth in subdivision (h). (*Ibid.*) While a juvenile offender's original sentence remains operative, "section 3051 has changed the manner in which [that] sentence operates by

capping the number of years that he or she may be imprisoned before becoming eligible for release on parole," thereby "supersed[ing] the statutorily mandated sentences" of non-excluded juvenile offenders. (*Id*. at p. 278.) "The Legislature has effected this change by operation of law, with no additional resentencing procedure required." (*Id*. at pp. 278-279.) Because the parole eligibility cap of section 3051 supersedes the mandatory sentence imposed by the trial court, "[s]uch a sentence is neither LWOP nor its functional equivalent," and therefore, "no *Miller* claim arises." (*Id*. at p.280.)

Here, there is no *Miller* claim for a much simpler reason. Williams was not a juvenile at the time of these offenses. However, effective January 1, 2016, section 3051 applied to anyone who committed offenses when they were under 23 years of age. (Former § 3051, subd. (b)(1); Stats. 2015, ch. 471, § 1.) And effective January 1, 2018, this section applies to persons who committed crimes when they were 25 years of age or younger. (§ 3051, subd. (b)(1).) Section 3051 applies "retrospectively, that is, to all eligible youth offenders regardless of the date of conviction." (*Franklin, supra*, 63 Cal.4th at p. 278.) Williams was younger than 25 years of age when she committed the crimes at issue in this case. She will be eligible for a youth offender parole hearing during her 20th year of incarceration because the controlling offense, i.e., aggravated human trafficking of a minor (Count 31), resulted in a sentence of "a life term of less than 25 years to life." (§ 3051, subd. (b)(2).)

Returning to *Franklin*, our Supreme Court remanded the matter to the trial court for the limited purpose of determining whether or not the juvenile offender in that case "was afforded sufficient opportunity to make a record of information relevant to his eventual youth offender parole hearing." (*Franklin, supra*, 63 Cal.4th at p. 284.) This was done because the youth offender parole hearing established by Senate Bill No. 260 "shall provide for a meaningful opportunity to obtain release" (§ 3051, subd. (e)), the statutory scheme also "contemplate[s] that information regarding the juvenile offender's characteristics and circumstances at the time of the offense will be available at a youth

offender parole hearing to facilitate the Board's consideration" (*id*. at pp. 283-284, citing § 3051, subd. (f)), and it was "not clear" whether the juvenile offender in *Franklin* "had sufficient opportunity to put on the record the kinds of information that sections 3051 and 4801 deem relevant at a youth offender parole hearing." (*Franklin*, *supra*, at p. 284.)

Here, as the Attorney General concedes, the sentencing record does not establish Williams had a sufficient opportunity to make a record of information relevant to her eventual youth offender parole hearing. We shall therefore remand the matter to the trial court for this limited purpose.

XV

Correction of the Abstract of Judgment

Finally, Williams contends her abstract of judgment must be corrected to reflect her conviction in Count 34 was for the crime of pimping, not pandering. The Attorney General concedes this point as well. As the parties correctly observe, we possess the inherent power to order correction of a clerical error in an abstract of judgment. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.) Here, however, there is no such error. The operative information charged Williams in Count 34 with the crime of pimping. The jury found her guilty of this crime. And contrary to the assertion of both Williams and the Attorney General, the abstract of judgment also designates this as a conviction for the crime of pimping. There is no clerical error to correct.

DISPOSITION

Melvin Derell Baldwin-Green's conviction in Count 29 for forcible rape is reversed. His judgment is so modified and further modified to strike the sentence imposed on Count 6 and stay the sentences imposed on Counts 5, 8, 12, 15, 22, 24, 27, 28, 34, and 37 pursuant to Penal Code section 654. The judgment entered against Tanishia Savannah Williams is modified to stay the sentences imposed on Counts 5, 15, 22, 24, 34, and 37 pursuant to Penal Code section 654. Her matter is further remanded to the trial court for the limited purpose of determining whether or not she had a sufficient

opportunity to make a record of information relevant to her eventual youth offender parole hearing. As so modified, the judgments are affirmed. The trial court is directed to prepare an amended abstract of judgment in both matters reflecting the foregoing modifications and to forward a certified copy of each to the Department of Corrections and Rehabilitation.

/s/
HOCH, J.

We concur:

/s/
ROBIE, Acting P. J.

/s/
RENNER, J.